

# **ATTACHMENT 31**

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3       IN RE:    PROCESSED EGG PRODUCTS :  
4       ANTITRUST LITIGATION               :  
5       -----:   MDL No. 2002  
6       THIS DOCUMENT RELATES TO:        :   08-MD-02002  
7       ALL ACTIONS                        :

8                       \*\* HIGHLY CONFIDENTIAL \*\*

9                       April 29, 2014

10  
11                      Videotaped deposition of  
12       KENNETH KLIPPEN, taken at Valley Forge Casino  
13       Resort, Casino Tower, 1210 1st Avenue, King  
14       of Prussia, Pennsylvania 19406, beginning at  
15       9:32 a.m., before LINDA ROSSI RIOS, a  
16       Federally Approved RPR, CCR and Notary  
17       Public.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 HAUSFELD LLP</p> <p>BY: JAMES J. PIZZIRUSSO, ESQUIRE</p> <p>4 1700 K. Street, NW</p> <p>Suite 650</p> <p>5 Washington, D.C. 20006</p> <p>202-540-7200</p> <p>6 jpizzirusso@hausfeldllp.com</p> <p>Representing Direct Purchaser Plaintiffs</p> <p>7</p> <p>8</p> <p>JENNER &amp; BLOCK, LLP</p> <p>9 BY: STEPHEN R. BROWN, ESQUIRE</p> <p>353 North Clark Street</p> <p>10 Chicago, IL 60654</p> <p>312-840-7282</p> <p>11 stephenbrown@jenner.com</p> <p>Representing Direct Action Plaintiffs and</p> <p>12 Kraft, Kellogg, Nestle and General Mills</p> <p>13</p> <p>14 MILBERG LLP</p> <p>BY: PAUL F. NOVAK, ESQUIRE</p> <p>15 777 Woodward Avenue</p> <p>Suite 890</p> <p>16 Detroit, MI 48226</p> <p>313-309-1761</p> <p>17 pnovak@milberg.com</p> <p>Representing Indirect Purchaser Plaintiffs</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 GIBSON DUNN &amp; CRUTCHER</p> <p>BY: JASON C. MCKENNEY, ESQUIRE</p> <p>4 2100 McKinney Avenue</p> <p>Suite 1100</p> <p>5 Dallas, TX 75201-6912</p> <p>214-698-3279</p> <p>6 jmckenney@gibsondunn.com</p> <p>Representing the Defendant, Cal-Maine</p> <p>7</p> <p>8</p> <p>PORTER, WRIGHT, MORRIS &amp; ARTHUR</p> <p>9 BY: DONALD M. BARNES, ESQUIRE</p> <p>1900 K Street, NW</p> <p>10 Suite 1110</p> <p>Washington, D.C. 20006</p> <p>11 202-778-3056</p> <p>dbarnes@porterwright.com</p> <p>12 Representing Rose Acre Farms</p> <p>(Via teleconference)</p> <p>13</p> <p>14</p> <p>EIMER STAHL, LLP</p> <p>15 BY: VANESSA G. JACOBSEN, ESQUIRE</p> <p>224 South Michigan Avenue, Suite 1300</p> <p>16 Chicago, IL 60604</p> <p>312-660-7604</p> <p>17 vjacobsen@eimerstahl.com</p> <p>On behalf of Moark, LLC</p> <p>18 and Norco Ranch, Inc.</p> <p>(Via teleconference)</p> <p>19</p> <p>20</p> <p>FAEGRE BAKER DANIELS</p> <p>21 BY: RYAN M. HURLEY, ESQUIRE</p> <p>300 North Meridian Street</p> <p>22 Suite 2700</p> <p>Indianapolis, IN 46204-1750</p> <p>23 317-237-1144</p> <p>ryan.hurley@faegrebd.com</p> <p>24 Representing Midwest Poultry Services</p> <p>(Via teleconference)</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 PEPPER HAMILTON, LLP</p> <p>BY: JAN P. LEVINE, ESQUIRE</p> <p>4 and</p> <p>EVAN W. DAVIS, ESQUIRE</p> <p>5 3000 Two Logan Square</p> <p>18th &amp; Arch Street</p> <p>6 Philadelphia, PA 19103</p> <p>215-981-4714</p> <p>7 215-981-4652</p> <p>levinej@pepperlaw.com</p> <p>8 davisew@pepperlaw.com</p> <p>Representing United Egg Producers and the</p> <p>9 United States Egg Marketers</p> <p>10</p> <p>11 WEIL GOTSHAL &amp; MANGES.</p> <p>BY: CARRIE M. ANDERSON, ESQUIRE</p> <p>12 1300 Eye Street, NW</p> <p>Suite 900</p> <p>13 Washington, D.C. 20005</p> <p>202-682-7231</p> <p>14 carrie.anderson@weil.com</p> <p>Representing Michael Foods</p> <p>15</p> <p>16</p> <p>HUTCHINSON P.A.</p> <p>17 BY: TROY J. HUTCHINSON, ESQUIRE</p> <p>1907 Wayzata Boulevard E</p> <p>18 Suite 330</p> <p>Wayzata, MN 55391</p> <p>19 952-215-0141</p> <p>Representing Sparboe Farms</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 JOHN CHRISTOPHER KLIPPEN, ESQUIRE</p> <p>P.O. Box 51</p> <p>4 Becker MN 55308</p> <p>jcklippen@hotmail.com</p> <p>5 Representing the Witness</p> <p>6</p> <p>7</p> <p>8 ALSO PRESENT:</p> <p>9 ROBERT KOWALCHIK, Videographer</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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18 Klippen-3	Curriculum Vitae	32
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20 Klippen-5	1/11/03 Memorandum, UE0331649 - UE0331651	39
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6 Klippen-22 11/3/06 E-mail, MFI0064584 135

8 Klippen-23 Proposal, MFI0064585 - MFI0064592 135

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212-490-3430

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<p style="text-align: right;">Page 11</p> <p>1        E X H I B I T S (cont'd.)  2        - - -  3 EXHIBIT NUMBER   DESCRIPTION   PAGE MARKED  4  5 Klippen-58   E-mail chain,                   SF058477 &amp; SF058478   258  6  7 Klippen-59   E-mail chain,                   SF081426 &amp; SF081427   262  8 Klippen-60   E-mail chain,                   SF110893 &amp; SF110894   265  9  10 Klippen-61   E-mail chain,                   MFI0023387 &amp; MFI002388   267  11 Klippen-62   The Egg Newsletter                   January 15, 2007,  12               MFI0067366 - MFI0057375 272  13 Klippen-63   UEP Annual Board                   Meeting and Executive  14               Conference                   October 14-15, 1999  15               Tucson, Arizona Minutes,                   UE0297186 - UE0297190   289  16  17 Klippen-64   Response to UEP                   Trademarking "Egg Farms                   of America" blog post   300  18  19 Klippen-65   10/4/04 Letter,                   NUCAL-08md2002-0001116   310  20 Klippen-66   United Voices                   Washington Report,  21               UE0069683 - UE0069686   317  22 Klippen-67   E-mail chain,                   UE0694999            319  23  24 Klippen-68   E-mail chain,                   FMI-001514 &amp; FMI-001515 321  25</p>	<p style="text-align: right;">Page 13</p> <p>1        DEPOSITION SUPPORT INDEX  2  3 INSTRUCTION NOT TO ANSWER:  4 Page Line  5 (None)  6  7  8  9  10 REQUEST FOR PRODUCTION OF DOCUMENTS:  11 Page Line    Description  12 (None)  13  14  15  16 STIPULATIONS:  17 Page Line  18 (None)  19  20  21 QUESTIONS MARKED:  22 Page Line  23 (None)  24  25</p>

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<p style="text-align: right;">Page 14</p> <p>1 2 - - - 3 VIDEOGRAPHER: We are now on the 4 record. Please note that the 5 microphones are sensitive and may pick 6 up whispering and private 7 conversations. Please turn off all 8 cell phones or place them away from 9 the microphones as they can interfere 10 with the deposition audio. Recording 11 will continue until all parties agree 12 to go off the record. 13 My name is Robert Kowalchik 14 representing Veritext New York. 15 The date today is April 29, 16 2014, and the time is approximately 17 10:18 a.m. This deposition is being 18 held at the Radisson, located at 1060 19 1st Avenue, King of Prussia, 20 Pennsylvania. 21 The caption of this case is In 22 Re: Processed Egg Products Antitrust 23 Litigation. This document relates to 24 all actions. This case is filed in 25 the United States District Court for</p>	<p style="text-align: right;">Page 16</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL 2 MS. LEVINE: Jan Levine with 3 Pepper Hamilton on behalf of UEP and 4 USEM. 5 MR. DAVIS: Evan Davis, Pepper 6 Hamilton on behalf of United Egg 7 Producers and United States Egg 8 Marketers. 9 MR. MCKENNEY: Jason McKenney 10 from Gibson Dunn &amp; Crutcher on behalf 11 of Defendant Counterclaim Plaintiff 12 Cal-Maine Foods. 13 MR. HUTCHINSON: Troy Hutchinson 14 on behalf of Sparboe Farms. 15 MR. KLIPPEN: Chris Klippen on 16 behalf of Ken Klippen the Witness. 17 THE WITNESS: Kenneth Klippen. 18 COURT REPORTER: Attorneys on 19 the phone, can you, please, identify 20 yourself? 21 MR. BARNES: Don Barnes on 22 behalf of Defendant Rose Acre Farms. 23 MS. JACOBSEN: Vanessa Jacobsen 24 on behalf of Defendants, Moark, LLC 25 and Norco Ranch, Inc.</p>
<p style="text-align: right;">Page 15</p> <p>1 2 the Eastern District of Pennsylvania, 3 Case Number MDL 2002 08-MD-02002. The 4 name of the witness is Kenneth 5 Klippen. 6 At this time the attorneys 7 present in the room and attending 8 remotely will identify themselves and 9 the parties they represent, after 10 which our court reporter, Linda Rossi 11 Rios representing Veritext, will swear 12 in the witness and we can proceed. 13 MR. PIZZIRUSSO: James 14 Pizzirusso, Hausfeld LLP for the 15 Direct Purchaser Plaintiffs. 16 MR. BROWN: Steve Brown, Jenner 17 &amp; Block on behalf of Direct Action 18 Plaintiffs, Kraft, Kellogg, General 19 Mills and Nestle. 20 MR. NOVAK: Paul Novak of 21 Milberg LLP, on behalf of the Indirect 22 Purchaser Plaintiffs. 23 MS. ANDERSON: Carrie Anderson 24 with Weil Gotshal on behalf of Michael 25 Foods.</p>	<p style="text-align: right;">Page 17</p> <p>1 2 MR. HURLEY: Ryan Hurley for 3 Defendant Midwest Poultry Services. 4 - - - 5 KENNETH KLIPPEN, after having 6 been duly sworn, was examined and 7 testified as follows: 8 - - - 9 EXAMINATION 10 - - - 11 BY MR. PIZZIRUSSO: 12 Q. Mr. Klippen, my name is James 13 Pizzirusso. I represent the Direct Purchaser 14 Plaintiffs. There are two other groups of 15 plaintiffs here, the Indirect Purchasers and 16 Direct Action Purchasers. And when I'm done, 17 they may ask you a few questions as well. I 18 don't know if the defendants may want to ask 19 questions. 20 I understand -- well, first of 21 all, I'm sorry, could you spell your name out 22 for the court and tell us where you currently 23 reside? 24 A. Kenneth Klippen, K-L-I-P-P like 25 in Paul, E-N. And I currently reside in</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Collegeville, Pennsylvania.</p> <p>3 Q. Have you ever been deposed</p> <p>4 before?</p> <p>5 A. I have.</p> <p>6 Q. And what circumstances?</p> <p>7 A. I was deposed for some</p> <p>8 litigation up in Minneapolis.</p> <p>9 Q. What did that litigation</p> <p>10 involve?</p> <p>11 A. It involved fraud through</p> <p>12 insurance companies.</p> <p>13 Q. Did it have anything to do with</p> <p>14 the egg industry?</p> <p>15 A. No.</p> <p>16 Q. Is that the only time you've</p> <p>17 been deposed?</p> <p>18 A. That's correct.</p> <p>19 Q. Well, I'm just going to go over</p> <p>20 a couple of ground rules. The deposition is</p> <p>21 being recorded, so we'd ask that you speak up</p> <p>22 and give full and complete answers. If you</p> <p>23 do not understand the question, please let me</p> <p>24 know. If you answer, I will take it to mean</p> <p>25 that you understood the question. Is that</p>	<p style="text-align: right;">Page 20</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit Klippen-1, Deposition</p> <p>3 Notice of Kenneth L. Klippen, was</p> <p>4 marked for identification.)</p> <p>5 - - -</p> <p>6 BY MR. PIZZIRUSSO:</p> <p>7 Q. I'm handing you --</p> <p>8 MR. HUTCHINSON: Hold on a</p> <p>9 second, we need copies.</p> <p>10 MR. PIZZIRUSSO: Okay. It's</p> <p>11 coming. It's just a Notice of</p> <p>12 Deposition. It's not anything</p> <p>13 controversial. It's not a Sparboe</p> <p>14 document.</p> <p>15 BY MR. PIZZIRUSSO:</p> <p>16 Q. I'm handing you a copy of your</p> <p>17 Notice of Deposition that's coming around.</p> <p>18 There are not enough copies for everybody in</p> <p>19 the room, but I assume you've seen this</p> <p>20 before?</p> <p>21 A. I have.</p> <p>22 Q. You are here pursuant to the</p> <p>23 subpoena?</p> <p>24 A. I am.</p> <p>25 - - -</p>
<p style="text-align: right;">Page 19</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 okay?</p> <p>3 A. That's fine.</p> <p>4 Q. If you need a break, let us</p> <p>5 know. We just ask that we not take a break</p> <p>6 in the middle of a pending question. And if</p> <p>7 you give an answer and later remember</p> <p>8 something that would further clarify that</p> <p>9 answer, just let us know and we can put that</p> <p>10 on the record as well.</p> <p>11 A. Okay.</p> <p>12 Q. Are you on any medication,</p> <p>13 drugs or alcohol that would prevent you from</p> <p>14 answering fully and truthfully today?</p> <p>15 A. No.</p> <p>16 Q. I understand that you are no</p> <p>17 longer a Sparboe employee. Is Sparboe</p> <p>18 representing you for the purposes of this</p> <p>19 deposition?</p> <p>20 A. No.</p> <p>21 Q. Who is representing you?</p> <p>22 A. Chris Klippen.</p> <p>23 MR. PIZZIRUSSO: Mark this as</p> <p>24 Exhibit 1.</p> <p>25 - - -</p>	<p style="text-align: right;">Page 21</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit Klippen-2,</p> <p>3 Acknowledgement and Consent, was</p> <p>4 marked for identification.)</p> <p>5 - - -</p> <p>6 BY MR. PIZZIRUSSO:</p> <p>7 Q. I've just handed you what's</p> <p>8 been marked as Klippen-2. Have you seen that</p> <p>9 document before?</p> <p>10 A. I have.</p> <p>11 Q. Is that your signature on the</p> <p>12 bottom of the document?</p> <p>13 A. It is.</p> <p>14 Q. You agree to be bound by the</p> <p>15 protective order in this case?</p> <p>16 A. I do.</p> <p>17 Q. What steps did you take today</p> <p>18 to prepare for your deposition?</p> <p>19 A. Knowing that the deposition was</p> <p>20 coming, I did review documents I had on file</p> <p>21 in my own personal office. I had some</p> <p>22 discussions with my attorney to prepare me.</p> <p>23 Q. Have you spoken with any of the</p> <p>24 attorneys representing any of the defendants</p> <p>25 in this litigation?</p>

6 (Pages 18 - 21)

<p style="text-align: right;">Page 22</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I have.</p> <p>3 Q. In preparation for this</p> <p>4 deposition?</p> <p>5 A. No.</p> <p>6 Q. In what context have you spoken</p> <p>7 with them?</p> <p>8 MR. HUTCHINSON: I'm going to</p> <p>9 caution the witness not to reveal any</p> <p>10 attorney-client privileged</p> <p>11 communication that you ever received</p> <p>12 from either myself as Sparboe counsel</p> <p>13 or any other counsel for Sparboe</p> <p>14 Farms.</p> <p>15 THE WITNESS: Understood.</p> <p>16 In answer to the question, Troy</p> <p>17 Hutchinson did telephone me to find</p> <p>18 out if I was going to be</p> <p>19 represented by an attorney, and I gave</p> <p>20 him Chris Klippen's phone number.</p> <p>21 BY MR. PIZZIRUSSO:</p> <p>22 Q. Did you discuss the context of</p> <p>23 this deposition at all?</p> <p>24 A. Did not.</p> <p>25 Q. Has Mr. Hutchinson given you</p>	<p style="text-align: right;">Page 24</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 that Wayne Pacelle had written. Wayne</p> <p>3 Pacelle is the president of the Humane</p> <p>4 Society of the United States, where he</p> <p>5 claimed to have evidence to support that</p> <p>6 United Egg Producers was actually trying to</p> <p>7 influence the prices as a result of their</p> <p>8 animal welfare program. That was written in</p> <p>9 2010.</p> <p>10 Can I add to that that I had</p> <p>11 nothing to do with this lawsuit. There's</p> <p>12 been references that I have. That is untrue.</p> <p>13 Q. I was going to ask you about</p> <p>14 that because are you aware that the</p> <p>15 defendants, that some of the defendants have</p> <p>16 accused you of providing information to</p> <p>17 support this lawsuit?</p> <p>18 MR. MCKENNEY: Objection to</p> <p>19 form.</p> <p>20 BY MR. PIZZIRUSSO:</p> <p>21 Q. You can answer.</p> <p>22 A. I have heard, but not directly</p> <p>23 from the defendants. I've heard from other</p> <p>24 people within the industry that have made</p> <p>25 that statement.</p>
<p style="text-align: right;">Page 23</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 confidential attorney-client privileged</p> <p>3 information in preparation for this</p> <p>4 deposition?</p> <p>5 A. No.</p> <p>6 Q. What are the kind of materials</p> <p>7 that you reviewed in your office in</p> <p>8 preparation for the deposition?</p> <p>9 A. I reviewed once again the</p> <p>10 Process Verified Program that I helped</p> <p>11 develop for the egg industry, and some of the</p> <p>12 clients are represented by attorneys here</p> <p>13 present. I also reviewed documentation</p> <p>14 relative to what the Humane Society had --</p> <p>15 Humane Society in the United States had</p> <p>16 written in relation to the antitrust case. I</p> <p>17 reviewed magazine articles such as Egg</p> <p>18 Industry Magazine that came out in 2008 that</p> <p>19 had material information relative to the</p> <p>20 antitrust case.</p> <p>21 Q. When you say the materials that</p> <p>22 the Humane Society had written, are you</p> <p>23 referring to the petition that they filed</p> <p>24 with the FTC?</p> <p>25 A. I'm referring to an article</p>	<p style="text-align: right;">Page 25</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Who in the industry has made</p> <p>3 that statement to you directly?</p> <p>4 A. Amon Baer from -- he's with J&amp;A</p> <p>5 Farms in Minnesota. I can't recall the --</p> <p>6 Lake Park, Minnesota.</p> <p>7 Q. And --</p> <p>8 A. He heard it directly.</p> <p>9 Q. Have you spoken with any of the</p> <p>10 attorneys representing any of the plaintiffs</p> <p>11 in this matter other than in trying to set up</p> <p>12 your deposition?</p> <p>13 A. No.</p> <p>14 Q. Have you provided any material</p> <p>15 in support -- to your knowledge, in support</p> <p>16 of this litigation?</p> <p>17 A. No.</p> <p>18 Q. Have you ever provided anything</p> <p>19 to the Humane Society that would be</p> <p>20 supportive of this litigation, to your</p> <p>21 knowledge?</p> <p>22 A. No.</p> <p>23 Q. Do you have any financial</p> <p>24 incentive in the outcome of this case?</p> <p>25 A. No.</p>

7 (Pages 22 - 25)



<p style="text-align: right;">Page 26</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. You know who Gene Gregory is,</p> <p>3 correct?</p> <p>4 A. I do.</p> <p>5 Q. In Gene Gregory's deposition in</p> <p>6 this case at page 628, paragraph (sic) 6, he</p> <p>7 said, "How many of these documents were</p> <p>8 provided by Ken Klippen to you and how much</p> <p>9 did he participate with the Humane Society of</p> <p>10 the United States in bringing documents to</p> <p>11 you to file a lawsuit against us?"</p> <p>12 And then skipping down to 14,</p> <p>13 "Now, come on. Come on. Some day or another</p> <p>14 I'm going to come right back at you with this</p> <p>15 stuff because I think I know the answers to</p> <p>16 these things. So don't hold him up as any</p> <p>17 saint in this deal."</p> <p>18 So just to clarify again with</p> <p>19 regard to what Gene Gregory said, you did not</p> <p>20 provide any material to the plaintiffs in</p> <p>21 this case?</p> <p>22 MR. MCKENNEY: Objection to</p> <p>23 form.</p> <p>24 THE WITNESS: That's correct.</p> <p>25 BY MR. PIZZIRUSSO:</p>	<p style="text-align: right;">Page 28</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MR. HUTCHINSON: Same objection.</p> <p>3 BY MR. PIZZIRUSSO:</p> <p>4 Q. Are you aware that they</p> <p>5 provided no money and have just provided</p> <p>6 cooperation as part of that settlement?</p> <p>7 MR. HUTCHINSON: Same objection.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. PIZZIRUSSO:</p> <p>10 Q. Do you know what a Complaint</p> <p>11 is?</p> <p>12 A. I do.</p> <p>13 Q. Have you reviewed the Complaint</p> <p>14 in this litigation?</p> <p>15 A. I have.</p> <p>16 Q. And when I mean Complaint, I</p> <p>17 should have clarified, I'm sorry, the Direct</p> <p>18 Purchaser Plaintiff's Class Action Complaint.</p> <p>19 A. I have.</p> <p>20 Q. So you're familiar generally</p> <p>21 with the allegations in the Complaint?</p> <p>22 A. Yes.</p> <p>23 Q. There are some discussions, I</p> <p>24 believe, of you. Did you see your name at</p> <p>25 all in the Complaint?</p>
<p style="text-align: right;">Page 27</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Or the Humane Society, is that</p> <p>3 also correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Do you understand that Sparboe</p> <p>6 has settled with the Direct Purchaser</p> <p>7 Plaintiffs who I represent in this case?</p> <p>8 MR. HUTCHINSON: I'm going to</p> <p>9 object to the extent that that calls</p> <p>10 for attorney-client privileged</p> <p>11 information.</p> <p>12 Mr. Klippen, I will remind you,</p> <p>13 any information that you received from</p> <p>14 me or other counsel for Sparboe is</p> <p>15 privileged, and I will instruct you</p> <p>16 not to disclose that information</p> <p>17 during this deposition.</p> <p>18 MR. PIZZIRUSSO: The fact of</p> <p>19 settlement is not privileged at all.</p> <p>20 BY MR. PIZZIRUSSO:</p> <p>21 Q. So I would just ask you again.</p> <p>22 Are you aware that Sparboe has settled with</p> <p>23 the Direct Purchaser Plaintiffs in this</p> <p>24 lawsuit?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 29</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. Is there anything sitting here</p> <p>4 today in the Complaint that you think is</p> <p>5 false?</p> <p>6 MR. MCKENNEY: Objection to</p> <p>7 form.</p> <p>8 THE WITNESS: I do not recall</p> <p>9 anything that I consider false.</p> <p>10 BY MR. PIZZIRUSSO:</p> <p>11 Q. Where did you -- I want to go</p> <p>12 into your background a little bit. Where did</p> <p>13 you go to undergrad?</p> <p>14 A. Michigan State University.</p> <p>15 Q. What was your degree in?</p> <p>16 A. Poultry science.</p> <p>17 Q. And when did you graduate?</p> <p>18 A. 1972.</p> <p>19 Q. And then did you go to graduate</p> <p>20 school?</p> <p>21 A. I did.</p> <p>22 Q. Where did you go to graduate</p> <p>23 school?</p> <p>24 A. Continued at Michigan State. I</p> <p>25 graduated with a Master of Science in 1975.</p>

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<p style="text-align: right;">Page 30</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And from there, what did you</p> <p>3 do?</p> <p>4 A. I went to work in Washington,</p> <p>5 D.C., but I am currently a Ph.D. candidate at</p> <p>6 Iowa State University in animal science with</p> <p>7 a specialty in animal welfare.</p> <p>8 Q. When do you expect to receive</p> <p>9 your Ph.D.?</p> <p>10 A. My projected date is</p> <p>11 undetermined at this time. I've been a Ph.D.</p> <p>12 candidate now for six years.</p> <p>13 Q. How long have you been in the</p> <p>14 egg industry?</p> <p>15 A. I started in 1982.</p> <p>16 Q. Can you generally describe your</p> <p>17 experience within the industry, what are the</p> <p>18 types of positions that you've held?</p> <p>19 A. In 1982 to 1992 I was with</p> <p>20 United Egg Producers in Atlanta, Georgia. I</p> <p>21 attained the position of senior vice</p> <p>22 president. I was offered an opportunity in</p> <p>23 London, England to represent the</p> <p>24 International Egg Commission as the director</p> <p>25 general. I moved to London in 1992. I was</p>	<p style="text-align: right;">Page 32</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 working under the Klippen &amp; Associates' name?</p> <p>3 A. I am. Uh-huh.</p> <p>4 Q. So while you were with Sparboe,</p> <p>5 you were still running Klippen &amp; Associates</p> <p>6 separate and apart from your job at Sparboe?</p> <p>7 A. Klippen &amp; Associates remained</p> <p>8 in effect at the time that I was working at</p> <p>9 Sparboe. Sparboe was a client originally</p> <p>10 along with several others in this room, the</p> <p>11 companies, and I went to work solely for</p> <p>12 Sparboe to help them in developing their</p> <p>13 animal welfare program.</p> <p>14 - - -</p> <p>15 (Exhibit Klippen-3, Curriculum</p> <p>16 Vitae, was marked for identification.)</p> <p>17 - - -</p> <p>18 BY MR. PIZZIRUSSO:</p> <p>19 Q. I am handing you what's been</p> <p>20 marked Klippen-3. Can you identify this for</p> <p>21 the record?</p> <p>22 A. I can. This is a CV of some of</p> <p>23 my experience.</p> <p>24 Q. And did you put this profile</p> <p>25 together on LinkedIn?</p>
<p style="text-align: right;">Page 31</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 there for two years. When I returned, I was</p> <p>3 offered several positions within the</p> <p>4 industry. United Egg Producers asked me to</p> <p>5 return to work for them in 1999 and to head</p> <p>6 up the office in Washington, D.C. Currently</p> <p>7 I am a consultant to a number of egg industry</p> <p>8 clients.</p> <p>9 Q. After you left -- when did you</p> <p>10 leave UEP after you returned in 1999?</p> <p>11 A. 2004.</p> <p>12 Q. And where did you go in 2004?</p> <p>13 A. Collegeville, PA.</p> <p>14 Q. I mean, what position did you</p> <p>15 hold after that?</p> <p>16 A. I formed my own business,</p> <p>17 Klippen &amp; Associates LLC.</p> <p>18 Q. And how long were you with</p> <p>19 Klippen &amp; Associates?</p> <p>20 A. I've been with them since 2004.</p> <p>21 I had a time when I was working for Sparboe</p> <p>22 Farms from 2008 to 2011, but then I returned</p> <p>23 to Klippen &amp; Associates offering consulting</p> <p>24 services.</p> <p>25 Q. And are you -- you're currently</p>	<p style="text-align: right;">Page 33</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I did.</p> <p>3 Q. Is this an accurate</p> <p>4 representation of your employment and</p> <p>5 educational experience?</p> <p>6 A. It is.</p> <p>7 Q. On page 2 it says Food and Drug</p> <p>8 Administration April '99 to March 2004. You</p> <p>9 didn't work for the Food and Drug</p> <p>10 Administration, did you?</p> <p>11 A. I did not. That was a project.</p> <p>12 You see the heading.</p> <p>13 Q. What I didn't see on here was</p> <p>14 the UEP. Did you deliberately leave that off</p> <p>15 of your employment history?</p> <p>16 MR. MCKENNEY: Objection to</p> <p>17 form. Mischaracterizes the document.</p> <p>18 THE WITNESS: Yes, I did.</p> <p>19 BY MR. PIZZIRUSSO:</p> <p>20 Q. What is Egg Farmers of America?</p> <p>21 A. Egg Farmers of America was a</p> <p>22 collision of egg farmers that were opposed to</p> <p>23 the national legislation that was being</p> <p>24 sought by United Egg Producers. It is no</p> <p>25 longer within my purview to represent Egg</p>

<p style="text-align: right;">Page 34</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Farmers of America. We have changed to the</p> <p>3 National Association of Egg Farmers, and that</p> <p>4 is a registered trademark.</p> <p>5 Q. Are you familiar with the UEP</p> <p>6 Certified Guidelines?</p> <p>7 A. I am.</p> <p>8 Q. What would you describe as your</p> <p>9 level of familiarity with those guidelines?</p> <p>10 A. Very familiar.</p> <p>11 Q. Did you have any involvement in</p> <p>12 the development of those guidelines?</p> <p>13 A. I did not.</p> <p>14 Q. They used to be called the</p> <p>15 Animal Care Certified Guidelines. Do you</p> <p>16 know why they changed?</p> <p>17 A. I do.</p> <p>18 Q. Why is that?</p> <p>19 A. There was an objection raised</p> <p>20 by one of the animal activist groups,</p> <p>21 Compassion Over Killing. It was carried to</p> <p>22 the Federal Trade Commission in Washington,</p> <p>23 D.C. UEP decided to adjust to UEP Certified.</p> <p>24 Q. What is your understanding of</p> <p>25 the main components of the UEP Certified</p>	<p style="text-align: right;">Page 36</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I do.</p> <p>3 Q. What's your recollection of</p> <p>4 those discussions?</p> <p>5 A. I raised concerns about the 100</p> <p>6 percent rule. My feeling was that this would</p> <p>7 be left to the individual egg farmer to</p> <p>8 decide what percentage of his flock he wanted</p> <p>9 to put under an animal welfare guideline</p> <p>10 consistent with what the demands of the</p> <p>11 market were. In other words, if he had</p> <p>12 certain customers that wanted to have welfare</p> <p>13 guidelines, he would be able to produce those</p> <p>14 for that customer. But most consumers today</p> <p>15 prefer to buy the least cost, safe quality</p> <p>16 product that we see in the stores today.</p> <p>17 Q. Did you raise those concerns</p> <p>18 while you were employed at UEP?</p> <p>19 A. I did.</p> <p>20 Q. What was the reaction from</p> <p>21 those within UEP who heard your concerns?</p> <p>22 A. That they were going to go</p> <p>23 forward nonetheless.</p> <p>24 Q. And who were the strongest</p> <p>25 proponents of going forward with the 100</p>
<p style="text-align: right;">Page 35</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Program?</p> <p>3 A. It was developed around the</p> <p>4 year 2000 in response to the Food Marketing</p> <p>5 Institute and the National Council of Chain</p> <p>6 Restaurants in response to some concerns</p> <p>7 raised by segments of society relative to the</p> <p>8 care of egg producing chickens. UEP dealt</p> <p>9 with space requirements, the food and water,</p> <p>10 beak trimming, molting, all of the procedures</p> <p>11 that are commonly used in poultry production</p> <p>12 practices today.</p> <p>13 Q. Do you recall something called</p> <p>14 the 100 percent rule?</p> <p>15 A. I do.</p> <p>16 Q. Can you explain what that is?</p> <p>17 A. The 100 percent rule was</p> <p>18 implemented by UEP to try to initiate</p> <p>19 compliance, full compliance by the individual</p> <p>20 egg farmers so that they had a 100 percent of</p> <p>21 their chickens under the Animal Welfare</p> <p>22 Guidelines that they had implemented.</p> <p>23 Q. Do you recall any discussions</p> <p>24 within UEP about the implementation of the</p> <p>25 100 percent rule?</p>	<p style="text-align: right;">Page 37</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 percent rule?</p> <p>3 A. Gene Gregory.</p> <p>4 Q. Were any of the egg producers</p> <p>5 also strong proponents of the 100 percent</p> <p>6 rule?</p> <p>7 A. I did not hear that directly,</p> <p>8 no.</p> <p>9 Q. Why -- scratch that.</p> <p>10 Do you recall other producers</p> <p>11 being opposed to the 100 percent rule?</p> <p>12 A. Several egg producers at that</p> <p>13 time did voice objections. I had left in</p> <p>14 2004 and they came to me for assistance in</p> <p>15 developing an alternative animal welfare</p> <p>16 program that did not require that they put a</p> <p>17 100 percent of the production on the welfare</p> <p>18 guidelines. And that was the Process</p> <p>19 Verified Program that I put together.</p> <p>20 Q. While you were still at UEP, do</p> <p>21 you recall some producers being opposed to</p> <p>22 the 100 percent rule?</p> <p>23 A. I do.</p> <p>24 - - -</p> <p>25 (Exhibit Klippen-4, 1/20/03)</p>

10 (Pages 34 - 37)

<p style="text-align: right;">Page 38</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Memo, Bates UE0331648, was marked for</p> <p>3 identification.)</p> <p>4 - - -</p> <p>5 BY MR. PIZZIRUSSO:</p> <p>6 Q. I'm showing you what's been</p> <p>7 marked as Klippen-4. It's Bates number</p> <p>8 UE0331648. And it appears to be a memo to</p> <p>9 the UEP Animal Welfare Committee from Garth</p> <p>10 Sparboe. Have you ever seen this document</p> <p>11 before?</p> <p>12 A. I have not.</p> <p>13 Q. In the document there's a list</p> <p>14 of 12 producers who have requested</p> <p>15 reconsideration of the 100 percent rule. Do</p> <p>16 you -- I'm sorry. Well, it says actually,</p> <p>17 "Request for Reconsideration - UEP Animal</p> <p>18 Welfare Husbandry Guidelines." Are these</p> <p>19 producers with whom you are familiar, these</p> <p>20 12?</p> <p>21 A. I am.</p> <p>22 Q. Do you know if these producers</p> <p>23 were opposed to the 100 percent rule?</p> <p>24 A. Yes.</p> <p>25 Q. And you know that they were, is</p>	<p style="text-align: right;">Page 40</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I have not.</p> <p>3 Q. Were you considered part of UEP</p> <p>4 management when you were in D.C.?</p> <p>5 A. Yes, I was.</p> <p>6 Q. So even though this was</p> <p>7 directed to UEP management, you don't believe</p> <p>8 you would have seen this?</p> <p>9 A. Correct. I was vice president</p> <p>10 and executive director of government</p> <p>11 relations, so my responsibilities within UEP</p> <p>12 were confined, if you will, to government</p> <p>13 relations activities in Washington, D.C.</p> <p>14 Q. Sure. I want to draw your</p> <p>15 attention down to the -- on the first page,</p> <p>16 it says Problem Number 1: "The 100% Rule."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And it says, "This problem is</p> <p>20 particularly troublesome to us for two</p> <p>21 reasons.</p> <p>22 "1. The marketing/economic</p> <p>23 perspectives involved, and,</p> <p>24 "2. Procedurally, how it was</p> <p>25 adopted."</p>
<p style="text-align: right;">Page 39</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 that your answer, or are you just -- let me</p> <p>3 clarify.</p> <p>4 You were saying to your</p> <p>5 knowledge these producers were opposed to the</p> <p>6 100 percent rule?</p> <p>7 A. I know of one producer that was</p> <p>8 opposed to the 100 percent rule.</p> <p>9 Q. Who is that producer?</p> <p>10 A. That's Sparboe Farms.</p> <p>11 MS. LEVINE: I'm going to object</p> <p>12 as this document being an incomplete</p> <p>13 document, Sparboe-4. There is an</p> <p>14 attachment. Sorry. Klippen-4.</p> <p>15 - - -</p> <p>16 (Exhibit Klippen-5, 1/11/03</p> <p>17 Memorandum, Bates UE0331649 -</p> <p>18 UE0331651, was marked for</p> <p>19 identification.)</p> <p>20 - - -</p> <p>21 BY MR. PIZZIRUSSO:</p> <p>22 Q. I'm handing you a copy of</p> <p>23 what's been marked as Klippen-5, UE0331649 to</p> <p>24 651. Have you ever seen this document</p> <p>25 before?</p>	<p style="text-align: right;">Page 41</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Do you recall those concerns</p> <p>3 being raised to UEP around this time in 2003?</p> <p>4 A. I do not.</p> <p>5 Q. The last sentence of the next</p> <p>6 paragraph, it says, "True, prices may rise in</p> <p>7 the short term as flock sizes are decreased."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Do you recall that prices</p> <p>11 increasing as flock sizes being decreased</p> <p>12 being part of the discussions at UEP around</p> <p>13 this time?</p> <p>14 A. No, I was not involved.</p> <p>15 Q. The next paragraph says,</p> <p>16 "Second (regarding the procedures used for</p> <p>17 adoption), in January 2002, the UEP Board</p> <p>18 debated implementation of the proposed</p> <p>19 guidelines. Agreement could not be reached</p> <p>20 on the 100% rule. Much discussion took place</p> <p>21 as to how or whether producers would seek to</p> <p>22 re-price accounts based upon increased cost</p> <p>23 of production.</p> <p>24 "A motion was made at the</p> <p>25 January 2002 meeting, and approved, that</p>

<p style="text-align: right;">Page 42</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 prior to initiation of the guidelines,</p> <p>3 producers would survey customers. This</p> <p>4 survey was to take place between then</p> <p>5 (January 2002) and October 2002. This</p> <p>6 survey, we hoped, would ascertain approximate</p> <p>7 percentages of customers requiring an Animal</p> <p>8 Welfare program."</p> <p>9 Do you recall that this survey</p> <p>10 was to take place?</p> <p>11 A. No.</p> <p>12 Q. And then it says, "However, in</p> <p>13 April 2002, via conference call, the Board</p> <p>14 evidently overrode the motion and advised by</p> <p>15 faxed memo UEP members of 100% compliance</p> <p>16 with cage space recommendations as going into</p> <p>17 effect immediately."</p> <p>18 Do you recall that issue coming</p> <p>19 up?</p> <p>20 A. No.</p> <p>21 Q. Were you on the board of UEP?</p> <p>22 A. No.</p> <p>23 Q. If you turn to page 3, it says,</p> <p>24 "MISCELLANEOUS CONSIDERATIONS." At the</p> <p>25 bottom of that, it says, "Those companies</p>	<p style="text-align: right;">Page 44</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 would be troubling if I were at one of those</p> <p>3 egg producers.</p> <p>4 Q. What do you mean by "that kind</p> <p>5 of control"?</p> <p>6 A. The control of requiring that</p> <p>7 you had to put a 100 percent of your flock</p> <p>8 under a program that you didn't have</p> <p>9 customers requiring.</p> <p>10 Q. And do you know if the 100</p> <p>11 percent rule was ever reconsidered by UEP</p> <p>12 during that time?</p> <p>13 A. If it was, I was not privy to</p> <p>14 that conversation. It was probably done in</p> <p>15 committee and then perhaps in executive. I</p> <p>16 attended many of the board meetings when I</p> <p>17 was to deliver presentations on certain</p> <p>18 legislation or regulations, but they</p> <p>19 oftentimes would have meetings for animal</p> <p>20 welfare separate from the government</p> <p>21 relations committee meeting concurrently so I</p> <p>22 was not privy to any discussions.</p> <p>23 Q. Were you -- did you ever raise</p> <p>24 concern at a board meeting about the 100</p> <p>25 percent rule yourself?</p>
<p style="text-align: right;">Page 43</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 frozen out of the process by the 100% rule</p> <p>3 and the commingling/no substitution rule need</p> <p>4 to seek compromise with the UEP program.</p> <p>5 Perhaps the future viability of these</p> <p>6 companies will dictate creation of an</p> <p>7 alternative, mutually supported program with</p> <p>8 modifications to allow these organizations to</p> <p>9 proactively offer welfare alternatives."</p> <p>10 Do you recall that alternative</p> <p>11 program being discussed in UEP around this</p> <p>12 time?</p> <p>13 A. No.</p> <p>14 Q. Are you surprised to see that</p> <p>15 in 2003 there were companies talking about an</p> <p>16 alternative to the program?</p> <p>17 MR. MCKENNEY: Objection to</p> <p>18 form.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. PIZZIRUSSO:</p> <p>21 Q. Why doesn't that surprise you?</p> <p>22 A. I've been in the egg industry a</p> <p>23 long time. I know the players. I know the</p> <p>24 people. I know their philosophical</p> <p>25 viewpoints. And to have that kind of control</p>	<p style="text-align: right;">Page 45</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I did not.</p> <p>3 Q. I think you said earlier,</p> <p>4 though, that you did express concerns about</p> <p>5 it to --</p> <p>6 A. Gene Gregory.</p> <p>7 Q. -- to Gene Gregory directly?</p> <p>8 A. Correct.</p> <p>9 - - -</p> <p>10 (Exhibit Klippen-6, 11/13/03</p> <p>11 Fax, Bates NL01199471 - NL0119473, was</p> <p>12 marked for identification.)</p> <p>13 - - -</p> <p>14 BY MR. PIZZIRUSSO:</p> <p>15 Q. I'm showing you what's been</p> <p>16 marked as Klippen-6. It's also Gregory</p> <p>17 Exhibit 48 dated NL -- I'm sorry, Bates</p> <p>18 NL01199471 to 473. It appears to be a letter</p> <p>19 sent to Irving Isaacson on November 5, 2003,</p> <p>20 from John Mueller, legal counsel at Sparboe.</p> <p>21 You were still at UEP in</p> <p>22 November of 2003. Correct?</p> <p>23 MR. MCKENNEY: Objection. Form.</p> <p>24 THE WITNESS: That's correct.</p> <p>25 BY MR. PIZZIRUSSO:</p>

12 (Pages 42 - 45)

<p style="text-align: right;">Page 46</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Have you ever seen this letter</p> <p>3 before?</p> <p>4 A. I have not.</p> <p>5 Q. Are you aware of this letter</p> <p>6 having been sent to UEP?</p> <p>7 A. No.</p> <p>8 MR. HUTCHINSON: Objection to</p> <p>9 the extent that that calls for</p> <p>10 privileged communications.</p> <p>11 BY MR. PIZZIRUSSO:</p> <p>12 Q. Referring to the second</p> <p>13 paragraph in this letter, it says, "First,</p> <p>14 please know that the Capper-Volstead</p> <p>15 Certification form you wanted us to sign will</p> <p>16 be signed and returned soon."</p> <p>17 Do you know what that is</p> <p>18 referring to?</p> <p>19 MR. MCKENNEY: Objection. Form.</p> <p>20 Lacks foundation. Calls for</p> <p>21 speculation.</p> <p>22 MR. HUTCHINSON: I'll object to</p> <p>23 the extent that that question asks the</p> <p>24 witness to respond with privileged</p> <p>25 communications that he received from</p>	<p style="text-align: right;">Page 48</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 on privilege and same cautionary to</p> <p>3 the witness.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. PIZZIRUSSO:</p> <p>6 Q. Do you know what Capper-Volstead</p> <p>7 is?</p> <p>8 A. I do.</p> <p>9 MR. MCKENNEY: Objection. Form.</p> <p>10 BY MR. PIZZIRUSSO:</p> <p>11 Q. What's your understanding of</p> <p>12 what Capper-Volstead is?</p> <p>13 MR. MCKENNEY: Objection. Form.</p> <p>14 Calls for a legal conclusion.</p> <p>15 MR. HUTCHINSON: I'll object on</p> <p>16 privilege grounds, again, and remind</p> <p>17 the witness not to reveal any</p> <p>18 communications from either myself or</p> <p>19 other counsel for Sparboe Farms.</p> <p>20 THE WITNESS: I went to work for</p> <p>21 United Egg Producers in 1982 knowing</p> <p>22 fully well that it was a</p> <p>23 Capper-Volstead cooperative which</p> <p>24 allows the members of that</p> <p>25 Capper-Volstead cooperative to discuss</p>
<p style="text-align: right;">Page 47</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 myself or other counsel for Sparboe</p> <p>3 Farms. I instruct the witness not to</p> <p>4 reveal any such communications.</p> <p>5 BY MR. PIZZIRUSSO:</p> <p>6 Q. Do you know what that's</p> <p>7 referring to?</p> <p>8 MR. MCKENNEY: Same objections.</p> <p>9 THE WITNESS: Could you restate</p> <p>10 the question?</p> <p>11 BY MR. PIZZIRUSSO:</p> <p>12 Q. Sure. The second paragraph</p> <p>13 says, "...please know that the</p> <p>14 Capper-Volstead Certification form you wanted</p> <p>15 us to sign will be signed and returned soon."</p> <p>16 Do you know what that is</p> <p>17 referring to?</p> <p>18 MR. MCKENNEY: Objection.</p> <p>19 BY MR. PIZZIRUSSO:</p> <p>20 Q. The Capper-Volstead</p> <p>21 certification form.</p> <p>22 MR. MCKENNEY: Objection. Form.</p> <p>23 Lacks foundation. Calls for</p> <p>24 speculation.</p> <p>25 MR. HUTCHINSON: Same objection</p>	<p style="text-align: right;">Page 49</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 pricing they could not discuss outside</p> <p>3 of that Capper-Volstead arrangement.</p> <p>4 This is not a trade association. This</p> <p>5 is a marketing cooperative. Trade</p> <p>6 associations cannot do that.</p> <p>7 BY MR. PIZZIRUSSO:</p> <p>8 Q. Were you aware of any members</p> <p>9 of UEP raising concerns about the</p> <p>10 Capper-Volstead status of UEP?</p> <p>11 A. No.</p> <p>12 Q. The next paragraph says,</p> <p>13 "Second, I visited with you and/or Al Pope</p> <p>14 about seeing some indicia of proof that</p> <p>15 United Egg Producers...is, and remains, a</p> <p>16 viable agricultural cooperative association.</p> <p>17 The information you have requested we sign</p> <p>18 and return via the 'Capper-Volstead</p> <p>19 Certification' form, will go a long ways</p> <p>20 towards that end. However, I am wondering</p> <p>21 how the associate or allied memberships auger</p> <p>22 into all of this? Could you please provide</p> <p>23 me your opinion on that matter."</p> <p>24 Do you recall any other</p> <p>25 concerns being raised about the allied or</p>



<p style="text-align: right;">Page 50</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 associate memberships of UEP and how that</p> <p>3 could impact Capper --</p> <p>4 MR. MCKENNEY: Objection. Form.</p> <p>5 Lacks foundation.</p> <p>6 MR. PIZZIRUSSO: Can you let me</p> <p>7 finish the question before you object,</p> <p>8 please?</p> <p>9 MR. MCKENNEY: I thought you</p> <p>10 were finished. Go ahead.</p> <p>11 MR. PIZZIRUSSO: Thank you.</p> <p>12 BY MR. PIZZIRUSSO:</p> <p>13 Q. Do you recall any other</p> <p>14 concerns being raised about allied or</p> <p>15 associate members and how that could impact</p> <p>16 Capper-Volstead status?</p> <p>17 MR. MCKENNEY: Objection. Form.</p> <p>18 Lacks foundation. Calls for</p> <p>19 speculation.</p> <p>20 THE WITNESS: I'm familiar with</p> <p>21 the law firm of Brann &amp; Isaacson and I</p> <p>22 knew Irving Isaacson personally for</p> <p>23 many years.</p> <p>24 MS. LEVINE: I'm just going to</p> <p>25 object to Mr. Klippen, who was a UEP</p>	<p style="text-align: right;">Page 52</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 in an effort to increase prices. Naturally,</p> <p>3 that strikes as price fixing and, we have</p> <p>4 concerns about future claims of this sort</p> <p>5 being made against the association and its</p> <p>6 members. I would appreciate you responding</p> <p>7 to how, if at all, the UEP has prepared</p> <p>8 itself to defend those prospects."</p> <p>9 Were the hidden -- was the</p> <p>10 hidden agenda of the animal welfare program</p> <p>11 ever raised directly to you?</p> <p>12 A. No.</p> <p>13 MS. LEVINE: Object to the form</p> <p>14 of the question. Lacks foundation.</p> <p>15 BY MR. PIZZIRUSSO:</p> <p>16 Q. Were you aware that Sparboe had</p> <p>17 raised concerns of price fixing with the</p> <p>18 program to UEP?</p> <p>19 A. Not at this time.</p> <p>20 Q. You became aware of that later?</p> <p>21 MR. HUTCHINSON: I'm going to</p> <p>22 object to the extent it calls for</p> <p>23 privileged communications. Any</p> <p>24 information that you received from</p> <p>25 either myself or other counsel for</p>
<p style="text-align: right;">Page 51</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 employee and, I think, officer at that</p> <p>3 time, of revealing any privileged</p> <p>4 communications with the law firm of</p> <p>5 Brann &amp; Isaacson.</p> <p>6 THE WITNESS: And Mr. Isaacson</p> <p>7 was very cautious in assuring that the</p> <p>8 steps that United Egg Producers took</p> <p>9 was always consistent with the laws</p> <p>10 governing the Capper-Volstead</p> <p>11 cooperatives. The allied members and</p> <p>12 the associate members could not vote</p> <p>13 in discussions if any pricing was</p> <p>14 brought up during the meetings.</p> <p>15 BY MR. PIZZIRUSSO:</p> <p>16 Q. I want to direct your attention</p> <p>17 to the next paragraph. It says, "As we have</p> <p>18 relayed from time-to-time to the UEP</p> <p>19 executive staff, the 'hidden agenda' of the</p> <p>20 Animal Welfare Program is concerning to us.</p> <p>21 In short, we believe if not carried forward</p> <p>22 properly a strong case could be made that the</p> <p>23 Animal Welfare Program is, in essence, a</p> <p>24 program being offered by our trade</p> <p>25 association and its members to reduce outputs</p>	<p style="text-align: right;">Page 53</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Sparboe Farms, I will instruct you not</p> <p>3 to disclose that information today.</p> <p>4 BY MR. PIZZIRUSSO:</p> <p>5 Q. Can you answer that question?</p> <p>6 A. I can.</p> <p>7 Q. Okay.</p> <p>8 A. It's in the Humane Society of</p> <p>9 the United States' Web site, an article</p> <p>10 written by Wayne Pacelle in 2010 where he did</p> <p>11 reference the objections by Sparboe. That's</p> <p>12 the only time I've seen it.</p> <p>13 Q. If you go to the next</p> <p>14 paragraph, it says, Additionally, we feel</p> <p>15 that, ultimately, the UEP mandate (it truly</p> <p>16 is not voluntary) of a 100 percent -- of a</p> <p>17 100 percent participation in the production</p> <p>18 of standards to the Animal Welfare Program</p> <p>19 may be tantamount to an unfair trade</p> <p>20 practice. Although we've requested</p> <p>21 reconsideration of the rules in the past,</p> <p>22 we've never asked for a firm written response</p> <p>23 from UEP as to why it will not consider the</p> <p>24 100 percent cage space compliance rule of the</p> <p>25 Animal Welfare Certification Program.</p>

<p style="text-align: right;">Page 54</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Were you aware of these</p> <p>3 concerns being raised by Sparboe to the UEP?</p> <p>4 A. No, not at this time.</p> <p>5 Q. But you knew that Sparboe was</p> <p>6 opposed to the 100 percent rule and sought</p> <p>7 reconsideration. Correct?</p> <p>8 A. I was in meetings where Garth</p> <p>9 Sparboe expressed it, and that's how I knew.</p> <p>10 Q. You, yourself, had also</p> <p>11 expressed concerns about the 100 percent</p> <p>12 rule?</p> <p>13 A. Only to Gene Gregory.</p> <p>14 Q. Did you have any concerns about</p> <p>15 the 100 percent rule being an unfair trade</p> <p>16 practice?</p> <p>17 A. I did not express that.</p> <p>18 Q. But you had those concerns</p> <p>19 internally?</p> <p>20 A. My concerns focused more on the</p> <p>21 role that we were trying to provide a service</p> <p>22 to the industry as opposed to mandating</p> <p>23 compliance. I didn't classify it as unfair</p> <p>24 trade practice. I classified it as something</p> <p>25 that I found objectionable that an</p>	<p style="text-align: right;">Page 56</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 asked: "Why would they do that?" "Who is to</p> <p>3 benefit from this?" The answer is that the</p> <p>4 "big players" (of which Sparboe would be</p> <p>5 considered one) control, politically, UEP and</p> <p>6 they are greedy corporate farming money</p> <p>7 grubbing SOBs. Justice departments will be</p> <p>8 alerted. Attorney General watchdog groups</p> <p>9 will be alerted, et cetera. Investigations</p> <p>10 may be launched stating that criminal</p> <p>11 activity is afoot and that these people are</p> <p>12 conspiring to fix prices. Civilly,</p> <p>13 Plaintiff's lawyers will tell these smaller</p> <p>14 producers that these folks owe you money,</p> <p>15 treble damages would be available in some</p> <p>16 states and let's sue these folks and see what</p> <p>17 happens. Your response to these concerns,</p> <p>18 please.</p> <p>19 Were these types of concerns</p> <p>20 raised to you while you were at UEP?</p> <p>21 A. No.</p> <p>22 Q. Were you aware that Sparboe had</p> <p>23 these concerns?</p> <p>24 A. Not to this extent.</p> <p>25 Q. So UEP didn't take this letter</p>
<p style="text-align: right;">Page 55</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 association or a group would demand of its</p> <p>3 membership.</p> <p>4 Q. Did you believe that others</p> <p>5 might find it objectionable on the unfair</p> <p>6 trade practices or antitrust grounds?</p> <p>7 MR. MCKENNEY: Objection.</p> <p>8 Speculation. Calls for legal</p> <p>9 conclusion.</p> <p>10 THE WITNESS: I couldn't answer</p> <p>11 that. I don't know.</p> <p>12 BY MR. PIZZIRUSSO:</p> <p>13 Q. Going to the next page, the</p> <p>14 next paragraph, it says, Irving, we have</p> <p>15 concerns that the Animal Welfare</p> <p>16 Certification Program will cause smaller egg</p> <p>17 producers to go under. They, either</p> <p>18 individually or collectively -- they, either</p> <p>19 individually or collectively, will seek some</p> <p>20 redress. Plaintiff's attorneys will ask them</p> <p>21 to tell their story. Their story will be</p> <p>22 that their own trade association put them out</p> <p>23 of business. Whether or not that ultimately</p> <p>24 is true, remains to be seen, but that is the</p> <p>25 story they will tell. The question will be</p>	<p style="text-align: right;">Page 57</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 and send it to all its members and say, hey,</p> <p>3 Sparboe is suggesting this might be price</p> <p>4 fixing. Is that right?</p> <p>5 MR. MCKENNEY: Objection. Form.</p> <p>6 THE WITNESS: I am not aware</p> <p>7 that this was ever -- I had never saw</p> <p>8 this letter, I have never -- so I</p> <p>9 could not say whether it was sent or</p> <p>10 not.</p> <p>11 BY MR. PIZZIRUSSO:</p> <p>12 Q. Going down to the next</p> <p>13 paragraph, it says, "Another scenario could</p> <p>14 be consumers, led by goodness, who knows yet</p> <p>15 what (if our Animal Welfare program is not</p> <p>16 consumer driving, the program is bound to</p> <p>17 fail) these consumer groups will say, 'UEP,</p> <p>18 this smells funny.' You got together with</p> <p>19 your members and 'voluntarily agreed' to</p> <p>20 reduce outputs by 20%. - 'We know what you</p> <p>21 are up to and why.'"</p> <p>22 Were you aware of these</p> <p>23 concerns?</p> <p>24 A. No.</p> <p>25 Q. And then the next paragraph,</p>

15 (Pages 54 - 57)



<p style="text-align: right;">Page 58</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 "Naturally, you get the message. We are</p> <p>3 concerned about taking affirmative steps to</p> <p>4 be participating in a 'conspiracy' (even</p> <p>5 arguably) to such an extent that legal</p> <p>6 liabilities will attach to the association</p> <p>7 and/or its members.</p> <p>8 "Finally, Irving, we are</p> <p>9 concerned that yourself or a reputably</p> <p>10 retained law firm and/or our justice</p> <p>11 department or all three, have not taken steps</p> <p>12 to reassure us members that the agricultural</p> <p>13 cooperative status still attaches to the UEP</p> <p>14 trade association and that the Animal Welfare</p> <p>15 initiatives there under have been scrutinized</p> <p>16 by concerned parties from a thoroughly legal</p> <p>17 perspective. I would appreciate your written</p> <p>18 response as to what, if any, steps have been</p> <p>19 taken in this regard as well."</p> <p>20 Do you know if the cooperative</p> <p>21 status of UEP was thoroughly scrutinized</p> <p>22 after this letter?</p> <p>23 MR. MCKENNEY: Objection to</p> <p>24 form.</p> <p>25 MS. LEVINE: Asked and answered.</p>	<p style="text-align: right;">Page 60</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 BY MR. PIZZIRUSSO:</p> <p>4 Q. I'm showing you what's been</p> <p>5 marked Klippen-8. This appears to be --</p> <p>6 first, sorry, Bates NL002449 to 50. This</p> <p>7 appears to be a memo to the UEP board from Al</p> <p>8 Pope.</p> <p>9 Now, I think you said you were</p> <p>10 not on the UEP board as of this date,</p> <p>11 December 1, 2003. Is that right?</p> <p>12 A. No staff member was on the UEP</p> <p>13 board. The UEP board is made up of actual</p> <p>14 egg producers, egg farmers. We were staff</p> <p>15 members. Occasionally I would be in a board</p> <p>16 meeting, but when it dealt with animal</p> <p>17 welfare, I was not.</p> <p>18 Q. So you don't recall seeing this</p> <p>19 memo, then?</p> <p>20 A. I do not recall reading this,</p> <p>21 no.</p> <p>22 Q. So in this letter he says he's</p> <p>23 attaching the letter from Sparboe to Irv</p> <p>24 Isaacson. And he has a couple of responses</p> <p>25 to that. On the second page, he says,</p>
<p style="text-align: right;">Page 59</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I do not.</p> <p>3 BY MR. PIZZIRUSSO:</p> <p>4 Q. Does it trouble you that</p> <p>5 Sparboe raised these concerns and yet you</p> <p>6 were never made aware of them yourself?</p> <p>7 A. Yes.</p> <p>8 - - -</p> <p>9 (Exhibit Klippen-7, 5/27/05</p> <p>10 Letter, Bates SF000171 - SF000174, was</p> <p>11 marked for identification.)</p> <p>12 - - -</p> <p>13 BY MR. PIZZIRUSSO:</p> <p>14 Q. I'm handing you what's been</p> <p>15 marked as Klippen-7. This is a group of</p> <p>16 documents. And this is how they were</p> <p>17 produced to us. But it looks like as of --</p> <p>18 on May -- first let's just -- let's start</p> <p>19 with the first page. May 2005 -- I'm sorry,</p> <p>20 you know what, I'm going to back up and go to</p> <p>21 another document first.</p> <p>22 - - -</p> <p>23 (Exhibit Klippen-8, 12/1/03</p> <p>24 Memo, Bates NL002449 &amp; NL002450, was</p> <p>25 marked for identification.)</p>	<p style="text-align: right;">Page 61</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 "Regional Trade Association Being Formed -</p> <p>3 Led by Sparboe company officials, a new</p> <p>4 association is being formed. As outlined, it</p> <p>5 will duplicate many activities presently</p> <p>6 being done by UEP and its Board. This is</p> <p>7 being done at the time of our greatest</p> <p>8 industry unity ever."</p> <p>9 Do you know what he's referring</p> <p>10 to there?</p> <p>11 A. I do not.</p> <p>12 Q. So are you aware of Sparboe</p> <p>13 ever having formed a separate regional trade</p> <p>14 association?</p> <p>15 A. No.</p> <p>16 Q. As a UEP staff member, you</p> <p>17 didn't receive this memo. Is that right?</p> <p>18 A. I do not recall receiving this</p> <p>19 particular memo, no. It was a practice that</p> <p>20 both offices, I headed up the office in</p> <p>21 Washington, D.C., Al Pope was the president,</p> <p>22 Gene Gregory was the vice president in</p> <p>23 Atlanta. We would share correspondence like</p> <p>24 this. I do not recall seeing this particular</p> <p>25 memo.</p>

16 (Pages 58 - 61)

<p style="text-align: right;">Page 62</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (Exhibit Klippen-9, 12/5/03</p> <p>4 Letter, Bates MFI0001880 &amp; MFI0001881,</p> <p>5 was marked for identification.)</p> <p>6 - - -</p> <p>7 BY MR. PIZZIRUSSO:</p> <p>8 Q. I'm showing you what's been</p> <p>9 marked as Klippen-9. It appears to be a</p> <p>10 letter sent to UEP members with a</p> <p>11 Capper-Volstead certification. Do you recall</p> <p>12 seeing this document?</p> <p>13 A. No.</p> <p>14 Q. Do you know if there were ever</p> <p>15 any results formulated from this survey?</p> <p>16 MR. MCKENNEY: Objection to</p> <p>17 form. Lacks foundation. Calls for</p> <p>18 speculation.</p> <p>19 THE WITNESS: I do not know of</p> <p>20 any.</p> <p>21 BY MR. PIZZIRUSSO:</p> <p>22 Q. Do you know of any companies</p> <p>23 who are members of Sparboe that would have to</p> <p>24 check no on this certification because more</p> <p>25 than 50 percent of their eggs would have been</p>	<p style="text-align: right;">Page 64</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MR. MCKENNEY: Lacks foundation.</p> <p>3 Calls for speculation.</p> <p>4 THE WITNESS: I don't recall</p> <p>5 any.</p> <p>6 BY MR. PIZZIRUSSO:</p> <p>7 Q. Are you aware of Michael Foods</p> <p>8 buying more eggs than were handled internally</p> <p>9 by its own company?</p> <p>10 MS. ANDERSON: Object to the</p> <p>11 form of the question.</p> <p>12 THE WITNESS: I do not.</p> <p>13 BY MR. PIZZIRUSSO:</p> <p>14 Q. Let's go back to Klippen-7.</p> <p>15 Now, it looks like in May 2005 Sparboe --</p> <p>16 looking at the first document, sorry,</p> <p>17 SF 00171 to 174, looking at the first</p> <p>18 document, it looks like they terminated their</p> <p>19 participation with the United States Egg</p> <p>20 Marketers. Do you know who United States Egg</p> <p>21 Marketers is?</p> <p>22 A. I do.</p> <p>23 Q. What do you know about them?</p> <p>24 A. They were a separate</p> <p>25 Capper-Volstead cooperative located in the</p>
<p style="text-align: right;">Page 63</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 handled -- I'm sorry, strike that.</p> <p>3 Do you know of any companies</p> <p>4 that would have had to check no in response</p> <p>5 to this question?</p> <p>6 MR. MCKENNEY: Objection to</p> <p>7 form.</p> <p>8 MR. HUTCHINSON: Objection to</p> <p>9 form. Misstates the document.</p> <p>10 MR. MCKENNEY: Lacks foundation.</p> <p>11 Calls for speculation.</p> <p>12 MR. HUTCHINSON: I think you</p> <p>13 misstated your question. Just read</p> <p>14 what you asked, you asked if anyone</p> <p>15 was members of Sparboe.</p> <p>16 MR. PIZZIRUSSO: You're right,</p> <p>17 thank you.</p> <p>18 BY MR. PIZZIRUSSO:</p> <p>19 Q. Do you know if any members of</p> <p>20 UEP would not have been able to answer this</p> <p>21 question --</p> <p>22 MR. MCKENNEY: Objection to</p> <p>23 form.</p> <p>24 BY MR. PIZZIRUSSO:</p> <p>25 Q. -- by yes?</p>	<p style="text-align: right;">Page 65</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Atlanta area apart from UEP for many years.</p> <p>3 And obviously at this time, of course, I had</p> <p>4 left United Egg Producers in 2004, that UEP</p> <p>5 had incorporated USEM into their framework.</p> <p>6 Q. And then if you look at the</p> <p>7 next page, SF 00172, it looks like in this</p> <p>8 document Sparboe is resigning from the Animal</p> <p>9 Care Certified Program. Do you know if when</p> <p>10 they resigned, that Sparboe stayed a member</p> <p>11 of UEP?</p> <p>12 A. I do know that Sparboe withdrew</p> <p>13 its membership, but then rejoined in 2012, I</p> <p>14 believe it was.</p> <p>15 Q. And then if you look at the</p> <p>16 next page, this is how it was produced to us</p> <p>17 even though it's incomplete, it says at the</p> <p>18 bottom of page 2, Gene sends an e-mail to</p> <p>19 Greg Pearce at CEMA, C-E-M-A. Do you know</p> <p>20 who CEMA is?</p> <p>21 A. I do.</p> <p>22 Q. Who are they?</p> <p>23 A. It's a Canadian group that</p> <p>24 administers egg sales.</p> <p>25 Q. It appears that he's saying</p>

17 (Pages 62 - 65)

<p style="text-align: right;">Page 66</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Sparboe is no longer an Animal Care Certified</p> <p>3 Program. Do you recall there being any</p> <p>4 discussion about contacting Sparboe customers</p> <p>5 to tell them that Sparboe was no longer on</p> <p>6 the Animal Care Certified Program at UEP?</p> <p>7 A. I do.</p> <p>8 Q. And what's your recollection of</p> <p>9 that discussion?</p> <p>10 MR. HUTCHINSON: I'll object to</p> <p>11 the extent that it calls for</p> <p>12 privileged communications and again</p> <p>13 instruct the witness not to reveal any</p> <p>14 communications from either myself or</p> <p>15 other counsel for Sparboe Farms.</p> <p>16 BY MR. PIZZIRUSSO:</p> <p>17 Q. Can you answer the question</p> <p>18 without revealing such information? First</p> <p>19 let me ask you, do you feel like you have</p> <p>20 privileged communication from an attorney at</p> <p>21 Sparboe or Troy Hutchinson about this issue?</p> <p>22 A. In this particular case, yes.</p> <p>23 So I decline to respond to that.</p> <p>24 Q. Turning to the next page, there</p> <p>25 is a letter from Gene Gregory to Beth Schnell</p>	<p style="text-align: right;">Page 68</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 through to help all the people in this</p> <p>3 room understand that we're dealing</p> <p>4 with a biological entity, the chicken.</p> <p>5 It doesn't produce the same number of</p> <p>6 eggs throughout its laying cycle.</p> <p>7 There's times when there's surplus</p> <p>8 periods and there's times when there's</p> <p>9 deficit periods. When there's a</p> <p>10 surplus period which is typically they</p> <p>11 build surpluses in anticipation of the</p> <p>12 Easter sale period, because they want</p> <p>13 to be able to meet the demand, but</p> <p>14 immediately after Easter, they have an</p> <p>15 oversupply situation so they look for</p> <p>16 additional places to distribute those</p> <p>17 eggs, to sell those eggs. Oftentimes</p> <p>18 there would be opportunities to sell</p> <p>19 those eggs to foreign countries. And</p> <p>20 that was the role that U.S. Egg</p> <p>21 Marketers would play. They would help</p> <p>22 move that oversupply situation into</p> <p>23 another country, and it was to balance</p> <p>24 the supply/demand ratio.</p> <p>25 BY MR. PIZZIRUSSO:</p>
<p style="text-align: right;">Page 67</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 dated June 21, 2005, SF000174. And looking</p> <p>3 at the second paragraph, Gene says in</p> <p>4 response to Beth Schnell's letter resigning</p> <p>5 from the United States Marketing -- Egg</p> <p>6 Marketers, "We are certainly sorry that you</p> <p>7 feel you can no longer be supportive of a</p> <p>8 cooperative effort by producers to</p> <p>9 occasionally improve domestic supply demand</p> <p>10 conditions with an export."</p> <p>11 Are you aware that one of the</p> <p>12 purposes of United States Egg Marketers'</p> <p>13 exports was to improve domestic supply</p> <p>14 conditions?</p> <p>15 MS. LEVINE: Object to the form</p> <p>16 of the question.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. PIZZIRUSSO:</p> <p>19 Q. And what's your knowledge of</p> <p>20 that?</p> <p>21 MR. HUTCHINSON: Remind the</p> <p>22 witness not to reveal any privileged</p> <p>23 communications.</p> <p>24 THE WITNESS: There's an</p> <p>25 understanding that I need to go</p>	<p style="text-align: right;">Page 69</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you know if that was ever</p> <p>3 done at a lower price than those eggs could</p> <p>4 be sold domestically?</p> <p>5 MR. MCKENNEY: Objection. Form.</p> <p>6 THE WITNESS: I was never</p> <p>7 involved in the operations of USEM.</p> <p>8 BY MR. PIZZIRUSSO:</p> <p>9 Q. I think we need to take a</p> <p>10 break.</p> <p>11 A. Can I clarify that?</p> <p>12 Q. Yes, please.</p> <p>13 A. This was in the early 1980s,</p> <p>14 there was an opportunity where an export</p> <p>15 order was offered to United Egg Producers,</p> <p>16 and I assisted in moving those eggs. It was</p> <p>17 a small order, but that's the only time that</p> <p>18 I was involved in moving those eggs. I was</p> <p>19 just helping to coordinate those who had</p> <p>20 surplus eggs that they could bring to a</p> <p>21 common location and they could be exported.</p> <p>22 So I was involved at that one time. And that</p> <p>23 was through a trade broker.</p> <p>24 MR. PIZZIRUSSO: I think we need</p> <p>25 to change tapes.</p>

18 (Pages 66 - 69)

<p style="text-align: right;">Page 70</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 VIDEOGRAPHER: Going off the</p> <p>3 record. 11:16 a.m. This is the end</p> <p>4 of tape number one.</p> <p>5 - - -</p> <p>6 (A recess was taken.)</p> <p>7 - - -</p> <p>8 VIDEOGRAPHER: We are on the</p> <p>9 record. 11:26 a.m. This is the</p> <p>10 beginning of tape number two.</p> <p>11 - - -</p> <p>12 (Exhibit Klippen-10, E-mail</p> <p>13 chain, Bates UE0461743, was marked for</p> <p>14 identification.)</p> <p>15 - - -</p> <p>16 BY MR. PIZZIRUSSO:</p> <p>17 Q. And so at some point I think</p> <p>18 you said 2004 maybe you left UEP and started</p> <p>19 Klippen &amp; Associates. Is that right?</p> <p>20 A. Correct.</p> <p>21 Q. Why did you leave UEP?</p> <p>22 A. I could see the differences</p> <p>23 philosophically between some staff members in</p> <p>24 Atlanta, myself, as it relates to its Animal</p> <p>25 Welfare Program. As I mentioned, I'm a</p>	<p style="text-align: right;">Page 72</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Gene responds to Linda at the</p> <p>3 top, "Linda, Yes I knew non-ACC eggs were</p> <p>4 selling at discounts and having trouble</p> <p>5 finding a home when surplus. It is</p> <p>6 especially noticeable during holiday periods</p> <p>7 such as Easter, Thanksgiving and Christmas.</p> <p>8 As far as Sparboe, I think they have too much</p> <p>9 pride to come back. They are in fact working</p> <p>10 through Ken Klippen in D.C. trying to</p> <p>11 disparage the UEP programs."</p> <p>12 Do you know what he is</p> <p>13 referring to here?</p> <p>14 A. I do. In 19 -- excuse me.</p> <p>15 In 2006, I had several egg</p> <p>16 companies come to me and ask that we develop</p> <p>17 an alternative animal welfare program. The</p> <p>18 intent of the animal welfare program was not</p> <p>19 to disparage, but just to create a little</p> <p>20 competition so that companies that were</p> <p>21 non-ACC or UEP certified could actually offer</p> <p>22 their eggs as being under an animal welfare</p> <p>23 program that had some substance to it. And</p> <p>24 that's why -- again, I'll emphasize that the</p> <p>25 intent was not to disparage any program. It</p>
<p style="text-align: right;">Page 71</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 specialist in animal welfare, and I was just</p> <p>3 not ready to continue with the cooperative.</p> <p>4 Q. What were some of the</p> <p>5 philosophical differences that you saw?</p> <p>6 A. The 100 percent rule that was</p> <p>7 coming was troublesome to me. I also wanted</p> <p>8 to focus on my job and I felt like I was</p> <p>9 being distracted by some of the differences</p> <p>10 that we had in viewpoints as it related to</p> <p>11 requiring industry members to participate in</p> <p>12 something that they didn't necessarily want</p> <p>13 to participate in.</p> <p>14 Q. I'm going to direct your</p> <p>15 attention now to Klippen-10, it's Bates</p> <p>16 UE0461743, e-mail dated, the initial,</p> <p>17 Thursday, March 16, 2006, from Linda Reickard</p> <p>18 to Gene, and she says, "You probably...know</p> <p>19 this, but Gary Bartness told me yesterday</p> <p>20 that non-ACC eggs can hardly be given away</p> <p>21 right now."</p> <p>22 Skipping ahead, "He asked if</p> <p>23 Sparboe would be getting back in the program</p> <p>24 &amp; indicated they are the ones practically</p> <p>25 giving their eggs away."</p>	<p style="text-align: right;">Page 73</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 was to offer an alternative.</p> <p>3 Q. So when Gene Gregory says that</p> <p>4 you were disparaging the program, or UEP,</p> <p>5 what would your response to that be?</p> <p>6 MS. LEVINE: Object to the form.</p> <p>7 Calls for speculation.</p> <p>8 THE WITNESS: I don't have any</p> <p>9 idea what Gene is talking about, but I</p> <p>10 can tell you directly that I did not</p> <p>11 intend to disparage UEP.</p> <p>12 - - -</p> <p>13 (Exhibit Klippen-11, E-mail</p> <p>14 chain, Bates UE0946434 - UE0946445,</p> <p>15 was marked for identification.)</p> <p>16 - - -</p> <p>17 BY MR. PIZZIRUSSO:</p> <p>18 Q. I'm showing you now what's been</p> <p>19 marked as Klippen-11. If you turn to page 2</p> <p>20 of this document, there at the bottom there</p> <p>21 is an e-mail from you. "The Egg Newsletter</p> <p>22 October 16, 2006."</p> <p>23 Do you see that?</p> <p>24 A. Uh-huh.</p> <p>25 Q. I'm sorry, and this document is</p>

19 (Pages 70 - 73)

<p style="text-align: right;">Page 74</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 UE0946434 to 45.</p> <p>3 Did you write this egg</p> <p>4 newsletter?</p> <p>5 A. I did.</p> <p>6 Q. And was this the first one of</p> <p>7 these that you sent out, do you recall?</p> <p>8 A. As close to one of the first,</p> <p>9 yes.</p> <p>10 Q. And on page 2 the first bullet</p> <p>11 point says, "In This Issue • Industry Meeting</p> <p>12 on New Direction."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. If you turn to the bottom of</p> <p>16 page 3, it says, "29% of Egg Industry</p> <p>17 Interested in New Direction." Could you</p> <p>18 explain what was happening at this time?</p> <p>19 A. Yes, I can. Again, that was</p> <p>20 not a disparagement, it was a number of egg</p> <p>21 industry companies came to me, indicated that</p> <p>22 they were not happy with the direction UEP</p> <p>23 was going. I offered to set up a meeting in</p> <p>24 Chicago where we can simply have an open</p> <p>25 forum to discuss the matter. And if you</p>	<p style="text-align: right;">Page 76</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 behind a program that continues caged layers,</p> <p>3 force molts -- force molts hens, or beak</p> <p>4 trims will not be acceptable.</p> <p>5 What did you mean by that?</p> <p>6 A. That the UEP Certified Program</p> <p>7 was suffering because it had been disparaged,</p> <p>8 not by me personally, I'll repeat that, but</p> <p>9 that there were groups that were attacking</p> <p>10 it. It was initially animal care certified,</p> <p>11 and we did have meetings with the Federal</p> <p>12 Trade Commission in Washington, D.C. I was</p> <p>13 familiar with the Attorneys General in a</p> <p>14 number of states that were objecting to the</p> <p>15 program as providing animal care. And it was</p> <p>16 an opportunity for industry leaders to see if</p> <p>17 there were alternative opportunities</p> <p>18 available apart from UEP.</p> <p>19 Q. And moving down to the next</p> <p>20 paragraph, the third sentence, you write,</p> <p>21 "The UEP Animal Welfare Committee sought 100%</p> <p>22 compliance by any participants under the</p> <p>23 pretense this would signal a higher degree of</p> <p>24 'welfare' and it was the 'right thing to</p> <p>25 do."</p>
<p style="text-align: right;">Page 75</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 notice, I actually provide the purpose in</p> <p>3 that document for that meeting.</p> <p>4 Q. And what was that?</p> <p>5 A. That egg industry leaders who</p> <p>6 see the need to discuss the direction the egg</p> <p>7 industry is being led and to see if there are</p> <p>8 other options available.</p> <p>9 Q. If you look on page 4 of this</p> <p>10 document, the second full paragraph down</p> <p>11 says, You recall that initially, the</p> <p>12 development of scientifically-supportable</p> <p>13 guidelines by UEP has served to position a</p> <p>14 united front that both producer and retailer</p> <p>15 can position themselves in defense of their</p> <p>16 position on production standards, but that</p> <p>17 defense has suffered with the repeated</p> <p>18 attacks by animal rights groups in the media,</p> <p>19 successes scored by the animal rights groups</p> <p>20 with the Better Business Bureau, the Federal</p> <p>21 Trade Commission and the Attorneys General in</p> <p>22 16 States. The program logo has now been</p> <p>23 forced to change from Animal Care Certified</p> <p>24 to UE -- United Egg Producers Certified, and</p> <p>25 now the \$100,000 fine amplifies that any logo</p>	<p style="text-align: right;">Page 77</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 What did you mean by</p> <p>3 "pretense"?</p> <p>4 A. Well, the thinking behind the</p> <p>5 100 percent rule was that if it was animal</p> <p>6 care, then everybody should have 100 percent</p> <p>7 of their production on it. My view was that</p> <p>8 the Animal Care Program or whatever program,</p> <p>9 animal welfare program that was in place</p> <p>10 again would be left to the individual company</p> <p>11 to decide and not an industry through a</p> <p>12 program such as this that mandated 100</p> <p>13 percent.</p> <p>14 Q. But if it was pretense that it</p> <p>15 would signal a higher degree of welfare and</p> <p>16 was the right thing to do, what do you think</p> <p>17 was the true reason?</p> <p>18 MS. LEVINE: Object to the form.</p> <p>19 Asked and answered.</p> <p>20 THE WITNESS: There was a term</p> <p>21 that was used at that time quite</p> <p>22 extensively as this is the right thing</p> <p>23 to do. And that's how unity was</p> <p>24 developed within the industry to</p> <p>25 support this program, yet I was in</p>

20 (Pages 74 - 77)

<p style="text-align: right;">Page 78</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 conversation with a number of egg</p> <p>3 farmers that did not feel that they</p> <p>4 wanted to be a part of that program</p> <p>5 but felt like they had no choice.</p> <p>6 That was pretense.</p> <p>7 BY MR. PIZZIRUSSO:</p> <p>8 Q. Now, the rest of this paragraph</p> <p>9 says, "The voluntary nature of the program's</p> <p>10 initial development was eroding away.</p> <p>11 Breakers with in-line production had</p> <p>12 customers asking for the program, but the</p> <p>13 Certified Program mandated 100% of the</p> <p>14 production to participate even though the</p> <p>15 breakers did not have 100% of their customer</p> <p>16 base demanding it. The Certified Program</p> <p>17 evolved into a marketing structure dictating</p> <p>18 how and to whom UEP members marketed their</p> <p>19 product."</p> <p>20 What did you mean by "a</p> <p>21 marketing structure"?</p> <p>22 A. The egg breakers are a segment</p> <p>23 of the industry that sells liquid to bakeries</p> <p>24 or institutional customers. They were not</p> <p>25 asking for welfare guidelines behind the</p>	<p style="text-align: right;">Page 80</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Burger King were the only two</p> <p>3 customers, chain restaurants that were</p> <p>4 requiring that all the eggs sold to</p> <p>5 them -- excuse me, McDonald's was 100</p> <p>6 percent. Burger King was a percentage</p> <p>7 of the eggs.</p> <p>8 BY MR. PIZZIRUSSO:</p> <p>9 Q. But they weren't saying even</p> <p>10 the eggs that you don't sell to us, you still</p> <p>11 need to sell them under our program. Isn't</p> <p>12 that right?</p> <p>13 MR. MCKENNEY: Objection to</p> <p>14 form. Leading. Lacks foundation.</p> <p>15 Calls for speculation.</p> <p>16 THE WITNESS: I don't know the</p> <p>17 answer to that.</p> <p>18 BY MR. PIZZIRUSSO:</p> <p>19 Q. Do you know if FMI made the</p> <p>20 demand that 100 percent of a producer's eggs</p> <p>21 had to be on any animal welfare program?</p> <p>22 MR. MCKENNEY: Objection. Lacks</p> <p>23 foundation. Calls for speculation.</p> <p>24 THE WITNESS: I do not know.</p> <p>25 BY MR. PIZZIRUSSO:</p>
<p style="text-align: right;">Page 79</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 production of those eggs. And yet in order</p> <p>3 for these breakers to participate in the UEP</p> <p>4 Certified Program, they had to put 100</p> <p>5 percent of the production on that. They did</p> <p>6 not have a customer base requiring it. If</p> <p>7 those breakers were purchasing those eggs,</p> <p>8 they were paying a higher price for those</p> <p>9 eggs because that had the welfare guidelines</p> <p>10 behind them. And they were basically being</p> <p>11 pushed in that direction. And I knew from</p> <p>12 personal conversations that some did not want</p> <p>13 to do that.</p> <p>14 Q. On the next page, you said at</p> <p>15 the first full paragraph, "Any welfare</p> <p>16 program should be customer-driven." Were you</p> <p>17 aware of any customers who were suggesting</p> <p>18 that 100 percent of all of a producer's eggs</p> <p>19 had to be on the program even if the producer</p> <p>20 had other customers that didn't want those</p> <p>21 eggs?</p> <p>22 MR. MCKENNEY: Objection to</p> <p>23 form. Lacks foundation. Calls for</p> <p>24 speculation.</p> <p>25 THE WITNESS: McDonald's and</p>	<p style="text-align: right;">Page 81</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you know if NCCR made the</p> <p>3 demand that 100 percent of a producer's eggs</p> <p>4 had to be on an animal welfare program?</p> <p>5 A. I do not know.</p> <p>6 MR. MCKENNEY: Objection. Lacks</p> <p>7 foundation. Calls for speculation.</p> <p>8 BY MR. PIZZIRUSSO:</p> <p>9 Q. If you skip back to page 2 of</p> <p>10 this e-mail, Duane M. sends it to Chad</p> <p>11 Gregory. Do you know who Duane M. is?</p> <p>12 A. I do not.</p> <p>13 Q. And then it looks like Chad</p> <p>14 sends it to Al Pope going up the chain. And</p> <p>15 then turning to page 1, Al Pope sends it</p> <p>16 to -- sends an e-mail to Howard Magwire and</p> <p>17 Randy Green and Mike McLeod and Don McNamara</p> <p>18 and Linda. Do you know who these people are?</p> <p>19 A. I do.</p> <p>20 Q. Who are they?</p> <p>21 A. When I was working in the</p> <p>22 Washington office, it was Mike McLeod's</p> <p>23 office. McLeod, Watkinson &amp; Miller is the</p> <p>24 law firm. It's on Massachusetts Avenue,</p> <p>25 Washington, D.C. Randy Green worked in that</p>

21 (Pages 78 - 81)



<p style="text-align: right;">Page 82</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 office, worked with me on issues. Howard</p> <p>3 Magwire replaced me when I left in 2004. Don</p> <p>4 McNamara was with the Egg Nutrition Center.</p> <p>5 I believe that's the names that you asked.</p> <p>6 Q. And Al Pope says, "Ken is</p> <p>7 representing Sparboe and is going to any</p> <p>8 lengths to discredit UEP and obviously its</p> <p>9 Board and staff."</p> <p>10 Were you representing Sparboe</p> <p>11 at this time?</p> <p>12 A. I was not.</p> <p>13 Q. Do you feel like you were</p> <p>14 trying to discredit UEP and its board and</p> <p>15 staff?</p> <p>16 A. I was not.</p> <p>17 Q. Then he says, "The tactics Ken</p> <p>18 is using is exactly the same as the animal</p> <p>19 activists - misleading, falsehoods and</p> <p>20 totally misrepresenting the issue. Not to</p> <p>21 mention how divisive this is."</p> <p>22 What is your reaction to that?</p> <p>23 A. Untrue.</p> <p>24 Q. "No words can express my</p> <p>25 feeling of total disappointment and now</p>	<p style="text-align: right;">Page 84</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 effort to undermine UEP. We simply must face</p> <p>3 the fact that Ken will say and do anything</p> <p>4 possible to try to undermine and discredit</p> <p>5 UEP."</p> <p>6 Do you agree with that?</p> <p>7 A. I do not. That was not the</p> <p>8 intent.</p> <p>9 Q. And then he says, "We must do</p> <p>10 this in two ways." The first point, "By</p> <p>11 reminding egg producers that UEP has been the</p> <p>12 most proactive trade association in the</p> <p>13 poultry industry and perhaps in all of</p> <p>14 Washington in representing our producers."</p> <p>15 Do you agree with that, that</p> <p>16 UEP has been the most proactive trade</p> <p>17 association?</p> <p>18 MR. MCKENNEY: Objection. Form.</p> <p>19 THE WITNESS: There are three</p> <p>20 trade associations in Washington,</p> <p>21 D.C., The National Turkey Federation,</p> <p>22 The National Chicken Council and the</p> <p>23 Washington office for United Egg</p> <p>24 Producers. All three were very active</p> <p>25 in working on Washington affairs. All</p>
<p style="text-align: right;">Page 83</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 madness. We will be responding to UEP</p> <p>3 members this week but wanted you to be aware</p> <p>4 of the situation."</p> <p>5 Did you know that he responded</p> <p>6 to UEP members about your request to have a</p> <p>7 meeting for those who are interested?</p> <p>8 A. I do.</p> <p>9 Q. And then it looks like Mike at</p> <p>10 the top of this e-mail writes back to you --</p> <p>11 to "Al," the first paragraph, "Randy and I</p> <p>12 are as shocked as you at the tactics that Ken</p> <p>13 is employing. I can understand your feelings</p> <p>14 of betrayal after all you have done for him.</p> <p>15 We were really good friends with Ken and were</p> <p>16 willing to cover for him in the year he was</p> <p>17 out sick. We too feel betrayed."</p> <p>18 Were you out sick for a year</p> <p>19 and they covered for you?</p> <p>20 A. I was not. I was -- I did have</p> <p>21 back surgery, so I was out for a period of</p> <p>22 time, but it was not a year.</p> <p>23 Q. Then it says, "Nevertheless, we</p> <p>24 must put our personal feelings aside and try</p> <p>25 to maintain the high road in combating this</p>	<p style="text-align: right;">Page 85</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 three developed animal welfare</p> <p>3 programs. UEP was the only one that</p> <p>4 required 100 percent of its members or</p> <p>5 100 percent of those who were</p> <p>6 participating to have 100 percent of</p> <p>7 their chickens on the program.</p> <p>8 BY MR. PIZZIRUSSO:</p> <p>9 Q. Point 2 he says the other way</p> <p>10 that they will combat this effort is "By</p> <p>11 dissecting and rebutting each falsehood and</p> <p>12 criticism of UEP that Ken makes, and by</p> <p>13 demonstrating that he does not have</p> <p>14 credibility. Eventually people will get</p> <p>15 tired of him."</p> <p>16 Do you feel like you were</p> <p>17 spewing falsehoods and criticisms of UEP?</p> <p>18 MR. MCKENNEY: Objection to</p> <p>19 form.</p> <p>20 THE WITNESS: I was not.</p> <p>21 BY MR. PIZZIRUSSO:</p> <p>22 Q. Were you aware of this strategy</p> <p>23 that they had to combat you?</p> <p>24 MS. LEVINE: Objection to form.</p> <p>25 THE WITNESS: I was not aware of</p>

22 (Pages 82 - 85)

<p style="text-align: right;">Page 86</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the strategy. I did get notice of the</p> <p>3 letter that was sent around to the</p> <p>4 industry after I had initiated this</p> <p>5 meeting in Chicago.</p> <p>6 - - -</p> <p>7 (Exhibit Klippen-12, E-mail</p> <p>8 chain, Bates UE0808615 &amp; UE0808616,</p> <p>9 was marked for identification.)</p> <p>10 - - -</p> <p>11 BY MR. PIZZIRUSSO:</p> <p>12 Q. I am now giving you what's been</p> <p>13 marked Klippen-12, Bates UE0808615 to 16. Do</p> <p>14 you recognize these e-mails?</p> <p>15 A. I do.</p> <p>16 Q. And can you explain what they</p> <p>17 are?</p> <p>18 A. It was my attempt to try to</p> <p>19 present the basis for having these</p> <p>20 discussions with egg producers. Again, as</p> <p>21 you can see by the e-mail, I clarified that</p> <p>22 there was no criticism of individuals in any</p> <p>23 of this. This was all about responding to</p> <p>24 egg farmers who had concerns expressed</p> <p>25 directly to me, and I just simply offered to</p>	<p style="text-align: right;">Page 88</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 industry and destroy UEP."</p> <p>3 Do you believe you were trying</p> <p>4 to divide the egg industry and destroy UEP?</p> <p>5 A. I was not. I will admit that I</p> <p>6 was paid well and I was given jobs with</p> <p>7 responsibility, all of that was true, but as</p> <p>8 I mention at the very onset of this e-mail,</p> <p>9 this was not a criticism of individuals. I</p> <p>10 said that's not what this is about. This was</p> <p>11 just an opportunity for farmers who were</p> <p>12 communicating with me directly for me to</p> <p>13 actually bring them together so that others</p> <p>14 can hear what they were saying.</p> <p>15 Q. In your response in the middle</p> <p>16 you said, "What are some of the concerns?</p> <p>17 The 100% requirement for producers to</p> <p>18 participate in the UEP-certified when they</p> <p>19 don't have customers demanding this program</p> <p>20 is causing them to question it. This</p> <p>21 shouldn't be surprising as some have</p> <p>22 expressed it openly in meetings."</p> <p>23 Who are you referring to as</p> <p>24 those that have expressed it openly in</p> <p>25 meetings?</p>
<p style="text-align: right;">Page 87</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 help them by hosting the meeting in Chicago.</p> <p>3 Q. On the second page, Gene says</p> <p>4 to you, "Your newsletter...references UEP's</p> <p>5 Animal Welfare Committee meeting held last</p> <p>6 week in which you have made statements that</p> <p>7 are inaccurate and disparaging. You have</p> <p>8 also referenced the BBB decision, the</p> <p>9 settlements with FTC and the AGs without</p> <p>10 knowing the facts and have as such repeated</p> <p>11 statements made by the animal activists."</p> <p>12 Do you say agree with that</p> <p>13 statement?</p> <p>14 A. I do not.</p> <p>15 Q. Did you have knowledge of the</p> <p>16 BBB decision, the settlements with the FTC</p> <p>17 and the AGs?</p> <p>18 A. I did.</p> <p>19 Q. And then the fourth paragraph</p> <p>20 he says, "I'm disappointed that a former UEP</p> <p>21 employee would take such actions. After</p> <p>22 having been paid well, treated fairly, and</p> <p>23 given jobs with responsibilities, I</p> <p>24 personally find it hard to believe that you</p> <p>25 would now be trying to divide the egg</p>	<p style="text-align: right;">Page 89</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. There were a number of egg</p> <p>3 producers that have communicated with me or</p> <p>4 have stood up and said that they had concerns</p> <p>5 about the 100 percent rule at meetings that</p> <p>6 voiced their concerns.</p> <p>7 Q. Can you name some of those</p> <p>8 producers? Do you recall who they are?</p> <p>9 A. Garth Sparboe was one.</p> <p>10 Q. Anyone else?</p> <p>11 A. If there were others, they did</p> <p>12 not express it openly in a forum where others</p> <p>13 could hear it. They would do it</p> <p>14 confidentially or in private.</p> <p>15 Q. When you in the next sentence</p> <p>16 say, "One producer who was on the certified</p> <p>17 program, but since has gone off of it, stated</p> <p>18 how upset he was that the program is becoming</p> <p>19 vindictive and punitive for those not on it,"</p> <p>20 are you referring to Sparboe there as well?</p> <p>21 A. Yes.</p> <p>22 Q. Did he state why he thought it</p> <p>23 was vindictive and punitive?</p> <p>24 A. No.</p> <p>25 Q. It says, "Some have questioned</p>

23 (Pages 86 - 89)



<p style="text-align: right;">Page 90</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the ethics of going to customers to sell the</p> <p>3 certified program." Do you know why they</p> <p>4 were questioning that?</p> <p>5 A. Yes.</p> <p>6 Q. Why is that?</p> <p>7 A. The relationship between a</p> <p>8 supplier and the customer is a very important</p> <p>9 relationship for the association or for the</p> <p>10 cooperative. To get in the middle of that</p> <p>11 relationship was objectionable to many within</p> <p>12 the egg industry.</p> <p>13 Q. It says, "Some have expressed</p> <p>14 they have lost a voice at meetings, and when</p> <p>15 they raise concerns, their objections fall</p> <p>16 flat." What did you mean by that?</p> <p>17 A. That those who had spoken up</p> <p>18 were embarrassed by staff at the meetings to</p> <p>19 the point where they stopped speaking out.</p> <p>20 Q. And then Gene responds to you,</p> <p>21 "I take it from your first sentence - 'In</p> <p>22 your usual style you have misrepresented what</p> <p>23 is happening.' And your last sentence when</p> <p>24 you say - 'They aren't causing the division</p> <p>25 within the industry, and neither am I' as a</p>	<p style="text-align: right;">Page 92</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Nebraska.</p> <p>3 Q. And he says, the last paragraph</p> <p>4 on page 1, Fast forward to 2006 time and I</p> <p>5 hear that you make comments at your meeting</p> <p>6 in Iowa that online breakers expansion were</p> <p>7 bad for the industry. I would like to</p> <p>8 dialogue this with you. I want to know the</p> <p>9 difference between breakers with full plates</p> <p>10 of business, like Rembrandt, and let's say</p> <p>11 CalMaine who has customers for all of its</p> <p>12 production, continuing to expand. What makes</p> <p>13 inline breakers your whipping boy? The</p> <p>14 problem is not inline breakers: it is anyone,</p> <p>15 offline breakers, inline breakers, producers</p> <p>16 who don't have customer for their product and</p> <p>17 can't run it economically. I assume UEP is</p> <p>18 representing the total industry not just</p> <p>19 those who choose to pay UEP additionally to</p> <p>20 supervise cage size.</p> <p>21 Have you heard similar concerns</p> <p>22 being raised to UEP about this issue?</p> <p>23 A. I have.</p> <p>24 Q. What's your understanding of</p> <p>25 what this concern was?</p>
<p style="text-align: right;">Page 91</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 statement that Gene Gregory is the problem."</p> <p>3 Did you believe that Gene Gregory was the</p> <p>4 problem?</p> <p>5 A. Yes.</p> <p>6 Q. Why is that?</p> <p>7 A. In talking with some of the egg</p> <p>8 producers privately, they felt like they</p> <p>9 could no longer voice their concerns because</p> <p>10 Gene would embarrass them in front of</p> <p>11 everybody. So they elected to speak</p> <p>12 privately rather than in open forum.</p> <p>13 - - -</p> <p>14 (Exhibit Klippen-13, E-mail</p> <p>15 chain, Bates UE0764003 &amp; UE0764004,</p> <p>16 was marked for identification.)</p> <p>17 - - -</p> <p>18 BY MR. PIZZIRUSSO:</p> <p>19 Q. I'm handing you what's been</p> <p>20 marked as Klippen-13, UE0764003 to 04, e-mail</p> <p>21 from Dean Hughson to Al Pope, dated August</p> <p>22 31, 2006. Do you know who Dean Hughson is?</p> <p>23 A. I do.</p> <p>24 Q. Who is he?</p> <p>25 A. He is with Henningsen Foods in</p>	<p style="text-align: right;">Page 93</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. Because UEP represented the egg</p> <p>3 producers, and we have some companies that</p> <p>4 actually produce eggs and also have breaking</p> <p>5 operations, then we have some egg breakers</p> <p>6 that purchase their eggs from other</p> <p>7 suppliers, they sometimes felt like they were</p> <p>8 being abused at these meetings when blame was</p> <p>9 being shifted for some of the problems within</p> <p>10 the industry.</p> <p>11 Q. And Chad, if you go to the top</p> <p>12 of the e-mail, sends this e-mail he got from</p> <p>13 Dean to Dave Rettig on October 18, 2006. Do</p> <p>14 you know who -- and he copies Al Pope and</p> <p>15 Gene Gregory. Who is Dave Rettig?</p> <p>16 A. He is with Rembrandt Foods.</p> <p>17 Q. And Chad says, the second --</p> <p>18 third paragraph, There have been other</p> <p>19 accusations that Dean has said and if I ever</p> <p>20 get proof - I will forward them on. I</p> <p>21 appreciate you saying you would try to put a</p> <p>22 lid on Dean and what he says. I also</p> <p>23 appreciate that you say you plan on being a</p> <p>24 UEP member in 2007.</p> <p>25 Do you -- are you aware of UEP</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 leadership trying to put a lid on and</p> <p>3 suppress dissensions within UEP?</p> <p>4 MS. LEVINE: Objection to form.</p> <p>5 MR. MCKENNEY: Objection to</p> <p>6 form.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MR. PIZZIRUSSO:</p> <p>9 Q. You're not aware of UEP trying</p> <p>10 to prevent criticism at meetings --</p> <p>11 MS. LEVINE: Objection to form.</p> <p>12 BY MR. PIZZIRUSSO:</p> <p>13 Q. -- from members?</p> <p>14 MS. LEVINE: Objection to form.</p> <p>15 THE WITNESS: Let me readjust my</p> <p>16 last statement. Yes, I am aware that</p> <p>17 they would try just by the mannerisms</p> <p>18 in which they conducted those</p> <p>19 meetings, there were occasions that</p> <p>20 individuals felt like they could not</p> <p>21 express themselves, in this case Dean</p> <p>22 Hughson who wrote to Al Pope</p> <p>23 expressing his concerns, he would not</p> <p>24 bring that up necessarily in a meeting</p> <p>25 for fear of the abuse, the verbal</p>	<p style="text-align: right;">Page 96</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 badger them into submission.</p> <p>3 - - -</p> <p>4 (Exhibit Klippen-14, E-mail</p> <p>5 chain, Bates UE0764300 - UE0764303,</p> <p>6 was marked for identification.)</p> <p>7 - - -</p> <p>8 BY MR. PIZZIRUSSO:</p> <p>9 Q. I'm handing you what's been</p> <p>10 marked as Klippen-14, Bates UE0746300 to 303.</p> <p>11 It appears to be a further discussion of the</p> <p>12 e-mail chain we looked at previously where</p> <p>13 you had a discussion with Kurt Kreher.</p> <p>14 A. Correct.</p> <p>15 Q. And who is he?</p> <p>16 A. He is an egg farmer in New York</p> <p>17 State.</p> <p>18 Q. Do you remember this e-mail</p> <p>19 discussion?</p> <p>20 A. I do.</p> <p>21 Q. Did you expect this kind of</p> <p>22 reaction from him?</p> <p>23 A. I did not.</p> <p>24 Q. And there's some back and</p> <p>25 forth, but I want to direct you to the first</p>
<p style="text-align: right;">Page 95</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 abuse he would receive at that meeting</p> <p>3 from staff.</p> <p>4 BY MR. PIZZIRUSSO:</p> <p>5 Q. In the next line it says, On</p> <p>6 October 30th, I hope you question Ken Klippen</p> <p>7 and all the things he says and ask yourself</p> <p>8 "is he telling the whole story." Or instead</p> <p>9 just taking a play from the Democrats</p> <p>10 playbook - trying to "scare" everybody into</p> <p>11 thinking there is a problem."</p> <p>12 Did Dave Rettig attend your</p> <p>13 October 30th meeting?</p> <p>14 A. He did.</p> <p>15 Q. Did he question you?</p> <p>16 A. No.</p> <p>17 Q. What's your reaction to Chad's</p> <p>18 statement that you're trying to scare</p> <p>19 everybody into thinking there was a problem?</p> <p>20 A. Well, I object to being called</p> <p>21 a democrat, or trying to scare anybody. As</p> <p>22 I've stated, and I'll restate, the purpose</p> <p>23 was simply to give these people an</p> <p>24 opportunity to come together and express</p> <p>25 themselves in a forum without having UEP</p>	<p style="text-align: right;">Page 97</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 paragraph on the first page where he responds</p> <p>3 to you and he says, Ken - I do not believe</p> <p>4 that you should not be involved in these</p> <p>5 things. You are not familiar with the UEP</p> <p>6 animal welfare committee meetings debates and</p> <p>7 discussions. You are not familiar with BOTH</p> <p>8 sides. What you are doing is providing a</p> <p>9 forum for the dissenters to break away and to</p> <p>10 ruin the "united" aspect of UEP. The</p> <p>11 issue -- this issue you are referring to has</p> <p>12 been debated at nearly every meeting for the</p> <p>13 past 6 years! None of us are getting "paid"</p> <p>14 for the certified eggs AND all of us are</p> <p>15 getting paid.</p> <p>16 Do you know what he meant by</p> <p>17 that?</p> <p>18 MS. LEVINE: All of us are being</p> <p>19 paid.</p> <p>20 MR. PIZZIRUSSO: Being paid.</p> <p>21 MR. MCKENNEY: Objection. Form.</p> <p>22 Lacks foundation. Calls for</p> <p>23 speculation.</p> <p>24 THE WITNESS: I did not fully</p> <p>25 understand what he was trying to get</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 at.</p> <p>3 BY MR. PIZZIRUSSO:</p> <p>4 Q. Isn't it true, though, that</p> <p>5 as -- would you agree that as the UEP</p> <p>6 Certified Program came into implementation</p> <p>7 with the 100 percent rule, that the supply of</p> <p>8 eggs was reduced?</p> <p>9 MS. LEVINE: Objection to form.</p> <p>10 Leading.</p> <p>11 MR. MCKENNEY: Objection to</p> <p>12 form. Misstates the record.</p> <p>13 MS. LEVINE: Calls for a</p> <p>14 hypothetical.</p> <p>15 THE WITNESS: It was reported in</p> <p>16 Egg Industry Magazine in 2008 that the</p> <p>17 animal welfare program implemented by</p> <p>18 UEP would reduce the supplies and</p> <p>19 would increase the price.</p> <p>20 BY MR. PIZZIRUSSO:</p> <p>21 Q. Do you know who Don Bell is?</p> <p>22 A. I do.</p> <p>23 Q. Do you recall Don Bell also</p> <p>24 looking at that issue?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 100</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. He was the Dean of Agriculture</p> <p>3 at Michigan State University until he went to</p> <p>4 California. He also served as the chairman</p> <p>5 of the UEP Scientific Advisory Committee that</p> <p>6 helped develop the Animal Welfare Guidelines.</p> <p>7 Q. Who is Mitch Head?</p> <p>8 A. Mitch Head is with GolinHarris</p> <p>9 in Atlanta. That's the public relations firm</p> <p>10 that was hired to represent UEP.</p> <p>11 Q. Are you surprised that this</p> <p>12 internal e-mail between you and Kurt was</p> <p>13 shared with these individuals?</p> <p>14 A. I'm not surprised, no.</p> <p>15 Q. Why are you not surprised?</p> <p>16 A. I mentioned earlier in my</p> <p>17 testimony that Gene Gregory and I had</p> <p>18 differences in philosophical perspectives. I</p> <p>19 knew that he had a temper and he was angry.</p> <p>20 You can see from my response to Kurt, I</p> <p>21 apologized that this was affecting him in</p> <p>22 this particular way. That's not what I</p> <p>23 intended. And that I was serving as a</p> <p>24 consultant and that egg producers had come to</p> <p>25 me, I didn't go out to them, they came to me</p>
<p style="text-align: right;">Page 99</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And did Don Bell -- do you know</p> <p>3 what conclusions Don Bell reached about that?</p> <p>4 A. I do not recall.</p> <p>5 Q. Do you recall discussions in</p> <p>6 the UEP newsletters about supply being down</p> <p>7 and prices being up because of the UEP</p> <p>8 Certified Program?</p> <p>9 MS. LEVINE: Objection to form.</p> <p>10 THE WITNESS: I know of it</p> <p>11 happening, but not directly. In other</p> <p>12 words, people would tell me that was</p> <p>13 in the UEP newsletter. Obviously, as</p> <p>14 you can see by some of this</p> <p>15 discussion, I was no longer privy to</p> <p>16 that inside information.</p> <p>17 BY MR. PIZZIRUSSO:</p> <p>18 Q. And then it looks like Kurt</p> <p>19 shared this e-mail with Gene who then sent it</p> <p>20 to Dolph Baker. He's with Cal-Maine. Right?</p> <p>21 A. That's correct.</p> <p>22 Q. And Jeffrey Armstrong, do you</p> <p>23 know who he is?</p> <p>24 A. I do.</p> <p>25 Q. Who is he?</p>	<p style="text-align: right;">Page 101</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 asking that I try to put something like this</p> <p>3 together. I used an illustration like</p> <p>4 founding fathers, and Kurt took exception to</p> <p>5 that. My last sentence in my e-mail was "The</p> <p>6 purpose of my meeting was to give them a</p> <p>7 forum to express themselves...", and to use</p> <p>8 reasoning. I knew that was not taking place</p> <p>9 at UEP meetings.</p> <p>10 - - -</p> <p>11 (Exhibit Klippen-15, 10/20/06</p> <p>12 Letter, Bates UE0217823 - UE0217829,</p> <p>13 was marked for identification.)</p> <p>14 - - -</p> <p>15 BY MR. PIZZIRUSSO:</p> <p>16 Q. I'm showing you what's been</p> <p>17 marked as Klippen-15, UE0217823 to 829.</p> <p>18 Have you seen this document</p> <p>19 before?</p> <p>20 A. I have.</p> <p>21 Q. Is this the letter you were</p> <p>22 referring to previously?</p> <p>23 A. Yes.</p> <p>24 Q. It appears to be a letter from</p> <p>25 UEP to UEP members -- UEA members and</p>

<p style="text-align: right;">Page 102</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 friends. It says in the second paragraph,</p> <p>3 "Some of you have informed us that you</p> <p>4 received phone calls and letters from a</p> <p>5 former UEP employee, Ken Klippen, and</p> <p>6 possibly others inviting producers to a</p> <p>7 meeting in Chicago on October 30th. The</p> <p>8 stated purposes of this meeting is to discuss</p> <p>9 the formation of a new organization to</p> <p>10 represent the egg industry because, as Ken</p> <p>11 implies, UEP is no longer being responsive to</p> <p>12 producer's needs."</p> <p>13 Do you agree that that's what</p> <p>14 you were implying?</p> <p>15 A. UEP was not allowing producers</p> <p>16 to voice their opinions. They were being</p> <p>17 stifled as was relayed to me by the producers</p> <p>18 attending those meetings. As you can see by</p> <p>19 the date, 2006, I had been gone for two</p> <p>20 years. We did plan to have a discussion</p> <p>21 about possibly forming a new organization.</p> <p>22 We did not do it at that time.</p> <p>23 Q. And the fourth paragraph it</p> <p>24 says, "There has always been debate on most</p> <p>25 every issue. Has everyone always agreed with</p>	<p style="text-align: right;">Page 104</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 through intimidation, and the result</p> <p>3 was that these egg farmers felt like</p> <p>4 they needed an outlet of some sort and</p> <p>5 they came to me.</p> <p>6 BY MR. PIZZIRUSSO:</p> <p>7 Q. Do you know why staff was</p> <p>8 intimidating some of the UEP members?</p> <p>9 MS. LEVINE: Objection to form.</p> <p>10 MR. MCKENNEY: Objection to</p> <p>11 form.</p> <p>12 THE WITNESS: Some of the</p> <p>13 members, although this letter makes it</p> <p>14 look like they've always had this very</p> <p>15 democratic process, and like, as I</p> <p>16 mentioned, that was true for many</p> <p>17 years. I was serving at UEP in</p> <p>18 Atlanta long before Gene Gregory even</p> <p>19 came to UEP, also his son Chad. And</p> <p>20 the meetings just before I left, I saw</p> <p>21 where the way they were being</p> <p>22 conducted, if somebody voiced an</p> <p>23 objection, they were -- it was</p> <p>24 embarrassing to see how somebody could</p> <p>25 raise an objection and be told since</p>
<p style="text-align: right;">Page 103</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the final decision? Certainly not, but most</p> <p>3 everyone understands that it is a democratic</p> <p>4 process and that everyone's voice is given an</p> <p>5 opportunity to be heard and considered."</p> <p>6 Do you agree that there was a</p> <p>7 democratic process at UEP where everyone's</p> <p>8 voice was given an opportunity to be heard and</p> <p>9 considered?</p> <p>10 MR. MCKENNEY: Objection to</p> <p>11 form.</p> <p>12 THE WITNESS: For many years I</p> <p>13 attended many meeting at UEP where</p> <p>14 that certainly was the case. But just</p> <p>15 prior to my leaving the organization,</p> <p>16 that democratic process was being</p> <p>17 stifled. After I left, it was pretty</p> <p>18 well snuffed out.</p> <p>19 BY MR. PIZZIRUSSO:</p> <p>20 Q. Why do you believe that was?</p> <p>21 MR. MCKENNEY: Objection to</p> <p>22 form.</p> <p>23 THE WITNESS: I believe that the</p> <p>24 opportunity to voice their objections</p> <p>25 was being stopped by staff. They were</p>	<p style="text-align: right;">Page 105</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 they were not privy to the information</p> <p>3 within the Animal Welfare Committee,</p> <p>4 they had no voice, they should not</p> <p>5 speak up. That was my final meeting</p> <p>6 in Savannah, Georgia, and I decided I</p> <p>7 did not want to be part of an</p> <p>8 organization that would do that to its</p> <p>9 members.</p> <p>10 BY MR. PIZZIRUSSO:</p> <p>11 Q. The last paragraph on the first</p> <p>12 page says, "Klippen's newsletter acknowledged</p> <p>13 that there is interest in creating a program</p> <p>14 to be competitive with the UEP Certified</p> <p>15 program. He also referenced actions taken by</p> <p>16 UEP's Board of Directors during the annual</p> <p>17 meeting in San Antonio by stating that UEP</p> <p>18 modified its program and further changes</p> <p>19 because of the fear of a competitive</p> <p>20 program."</p> <p>21 Do you still believe that</p> <p>22 that's true?</p> <p>23 MS. LEVINE: Objection to form.</p> <p>24 THE WITNESS: I cannot recall</p> <p>25 that to be honest with you. In</p>

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<p style="text-align: right;">Page 106</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 looking that over, that was something</p> <p>3 that could possibly have taken place</p> <p>4 that I just cannot recall.</p> <p>5 BY MR. PIZZIRUSSO:</p> <p>6 Q. I want to direct your attention</p> <p>7 to the last two pages of this document which</p> <p>8 are handwritten notes that were attached to</p> <p>9 it. Do you see those? The last two pages.</p> <p>10 A. I'm sorry. [Reviewing</p> <p>11 document.]</p> <p>12 Q. This is a series of questions</p> <p>13 that Gene Gregory testified about at his</p> <p>14 deposition, and I'm going to read you some</p> <p>15 testimony from him about them.</p> <p>16 A. Okay.</p> <p>17 Q. I want to give you some</p> <p>18 background and ask you some questions about</p> <p>19 that.</p> <p>20 In his deposition on page 621,</p> <p>21 in response to "What are they," Gene Gregory</p> <p>22 responded, "They're my handwritten -- Ken</p> <p>23 Klippen walked into the office of McLeod</p> <p>24 Watkinson &amp; Miller where he worked for us as</p> <p>25 our government relations representative. He</p>	<p style="text-align: right;">Page 108</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I didn't use the word "sue." I</p> <p>3 did tell him that I considered it tortious</p> <p>4 business interference for him to prevent me</p> <p>5 from consulting with people within the</p> <p>6 industry when I had every right to do so.</p> <p>7 Q. And then he says, starting on</p> <p>8 page 622 at the bottom, "So I went</p> <p>9 prepared..." So Ken goes through all of this</p> <p>10 and he keeps talking and keeps talking about</p> <p>11 all that kind of stuff. "So I went prepared</p> <p>12 and I said, okay, now, Ken, I'm going to ask</p> <p>13 you some questions, and I'd -- all you have</p> <p>14 to do is say no. If you didn't do these</p> <p>15 things, just say no, and we'll just shake</p> <p>16 hands and part good friends. So I said, did</p> <p>17 you visit with USDA following UEP's 2000</p> <p>18 annual meeting and tell USDA that UEP wanted</p> <p>19 all commodity purchased to be from UEP</p> <p>20 certified companies." That's the first --</p> <p>21 the second question.</p> <p>22 A. That was the year 2000?</p> <p>23 Q. Well, this says 2000, but his</p> <p>24 question says 2005. I think that's what it's</p> <p>25 referring to. So he says, let me -- well,</p>
<p style="text-align: right;">Page 107</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 said to Mike McLeod you tell Gene Gregory</p> <p>3 that if he doesn't quit calling on my --</p> <p>4 quit trying to take business away from me,</p> <p>5 then I'm going to sue him. And so Mike</p> <p>6 called me and I said I don't know what the</p> <p>7 hell he's talking about?</p> <p>8 "So I said, you call Ken and</p> <p>9 tell him let's meet and have lunch. So he</p> <p>10 did. And Ken said, well, I'm not going to</p> <p>11 attend unless I have my lawyer with me. And</p> <p>12 I said, that's fine, that's perfectly fine.</p> <p>13 Mike, you can go with me."</p> <p>14 Do you recall what he's</p> <p>15 referring to here?</p> <p>16 THE WITNESS: I recall the</p> <p>17 meeting. And it was a dinner we had,</p> <p>18 and Chris Klippen was with me at that</p> <p>19 time.</p> <p>20 BY MR. PIZZIRUSSO:</p> <p>21 Q. Do you agree that this is how</p> <p>22 it went down, that you said -- you went into</p> <p>23 Mike McLeod's office and said if he doesn't</p> <p>24 quit trying to take my business away from me,</p> <p>25 then I'm going to sue him?</p>	<p style="text-align: right;">Page 109</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the first question that's written out says,</p> <p>3 what were reasons for leaving UEP. We've</p> <p>4 already talked about that.</p> <p>5 The second one says, did you</p> <p>6 visit USDA following UEP's 2005 (sic) annual</p> <p>7 meeting and tell USDA that UEP wanted all</p> <p>8 commodity purchases to be from UEP certified</p> <p>9 companies?</p> <p>10 A. Did not.</p> <p>11 MS. LEVINE: Objection to form</p> <p>12 of the question.</p> <p>13 MS. ANDERSON: Are you reading</p> <p>14 from the deposition now or the</p> <p>15 document?</p> <p>16 MR. PIZZIRUSSO: That was the</p> <p>17 document.</p> <p>18 BY MR. PIZZIRUSSO:</p> <p>19 Q. And your answer was?</p> <p>20 A. No. I did visit with the USDA</p> <p>21 as I was a consulted, and there were two</p> <p>22 companies that asked me to help them because</p> <p>23 the money that was being used to promote the</p> <p>24 UEP Certified Program was coming from -- they</p> <p>25 were petitioning the American Egg Board for</p>

28 (Pages 106 - 109)

<p style="text-align: right;">Page 110</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the checkoff dollars that they were</p> <p>3 contributing to to promote a program that</p> <p>4 they were not participating in at that time.</p> <p>5 They contracted with me. They said can you</p> <p>6 stop this from happening because it was</p> <p>7 \$2 million a year for a period of five years.</p> <p>8 I did take them to USDA, we met with the</p> <p>9 undersecretary. Then I took them to Capitol</p> <p>10 Hill, we met with members of Congress and</p> <p>11 explained that there were companies that were</p> <p>12 by law checking off money into a checkoff</p> <p>13 program that they did not want to be used to</p> <p>14 promote a program that they were not</p> <p>15 participating on, and I was successful in</p> <p>16 stopping that.</p> <p>17 Q. And then he says on page 625 in</p> <p>18 his deposition, starting at line 23, "So</p> <p>19 anyway, the list here, I go down through this</p> <p>20 list of things that he has said or done, and</p> <p>21 I -- after about the third one, he's saying</p> <p>22 no, no, no, I'm not going to answer that.</p> <p>23 And he elbows his brother who is sitting on</p> <p>24 the side and he says let's get the hell out</p> <p>25 of here. I am not going to take any more of</p>	<p style="text-align: right;">Page 112</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 disparaged the UEP Certified program?" And</p> <p>3 what would your response to that be?</p> <p>4 A. Initially the UEP Certified</p> <p>5 Program, I was the spokesperson for to the</p> <p>6 media, to the press, I was on television</p> <p>7 defending the UEP Certified Program because</p> <p>8 it was a science-based program. I was</p> <p>9 critical of the program when it went toward</p> <p>10 the 100 percent rule. And I remained</p> <p>11 critical as they developed -- as the program</p> <p>12 developed.</p> <p>13 Q. What other aspects of the</p> <p>14 program were you critical of beyond the 100</p> <p>15 percent rule?</p> <p>16 MS. LEVINE: Objection to the</p> <p>17 form of the question. Leading.</p> <p>18 Misstates what Mr. Klippen just</p> <p>19 testified to.</p> <p>20 THE WITNESS: I have a</p> <p>21 background in poultry science. I'm</p> <p>22 the only staff person at UEP that has</p> <p>23 two degrees. I'm the only staff</p> <p>24 person that had any degree in poultry</p> <p>25 science so I understood poultry</p>
<p style="text-align: right;">Page 111</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 this. And I say to him again, Ken, listen,</p> <p>3 we have been friends, I don't know what's</p> <p>4 going on here. All you've got to do is say</p> <p>5 no. If you walk out of here without saying</p> <p>6 no, then I assume that you're in the business</p> <p>7 now of trying to disparage UEP and our</p> <p>8 programs. And he just up and left."</p> <p>9 Is that your recollection of</p> <p>10 how that meeting occurred?</p> <p>11 A. No.</p> <p>12 Q. Can you tell us in your words</p> <p>13 what happened?</p> <p>14 A. The meeting started off very</p> <p>15 friendly. We shook hands. We exchanged</p> <p>16 pleasantries. We then discussed the actions</p> <p>17 that I had taken. It's when he repeated that</p> <p>18 I was a traitor to UEP several times, and I</p> <p>19 kept trying to bring the program or the</p> <p>20 discussion back to what the program was</p> <p>21 about, why we did this, I finally turned to</p> <p>22 my brother and said, I'm not going to take</p> <p>23 any more of this. I never use the word hell</p> <p>24 because that's not part of my language.</p> <p>25 Q. Question 4 says, "Have you</p>	<p style="text-align: right;">Page 113</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 production. I knew that over a period</p> <p>3 of four decades we had grown to the</p> <p>4 point where we were producing eggs in</p> <p>5 a safe and wholesome way in a</p> <p>6 conventional cage. To maximize the</p> <p>7 efficiency of that system would mean</p> <p>8 that if there were any death loss by</p> <p>9 chickens dying from a disease or just</p> <p>10 whatever occurrence, that we would be</p> <p>11 able to use a method called</p> <p>12 backfilling where we would take a</p> <p>13 bird, make sure it was healthy, would</p> <p>14 not compromise the health of the flock</p> <p>15 and put it in the cage so that we</p> <p>16 maximize the efficiency of that</p> <p>17 operation. UEP had progressed to the</p> <p>18 point where they prohibited</p> <p>19 backfilling and I found that</p> <p>20 objectionable.</p> <p>21 BY MR. PIZZIRUSSO:</p> <p>22 Q. Do you know if the prohibitions</p> <p>23 on backfilling had anything to do with</p> <p>24 impacting the supply of eggs?</p> <p>25 A. I'm not aware of any</p>



<p style="text-align: right;">Page 114</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 discussions where that was the intent. I</p> <p>3 became very suspicious as time went on</p> <p>4 because this control mechanism that UEP was</p> <p>5 implementing over this whole program made me</p> <p>6 suspicious, but I don't have any proof of</p> <p>7 that actually taking place.</p> <p>8 Q. On question 6 he says, "Did you</p> <p>9 solicit information about exports from USEM</p> <p>10 member without consulting USEM?" Do you know</p> <p>11 what he's referring to here?</p> <p>12 A. I do not.</p> <p>13 Q. Question 8 says, "Were you not,</p> <p>14 at least more than a year before leaving UEP,</p> <p>15 telling people that Al Pope was going to</p> <p>16 retire and you would be the new president?"</p> <p>17 A. Al Pope came to me in</p> <p>18 Washington, D.C. to compliment me on this</p> <p>19 issue I did with the Food and Drug</p> <p>20 Administration, and he told me to be patient,</p> <p>21 that one day I would be the president of UEP.</p> <p>22 My response was that was not my intention.</p> <p>23 Q. So if Gene Gregory implies that</p> <p>24 you have an axe to grind against him because</p> <p>25 he became president, what would your response</p>	<p style="text-align: right;">Page 116</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the AMS or the Agricultural Marketing</p> <p>3 Service. Charles Johnson has retired. But</p> <p>4 Craig Morris and Roger Glasshoff remain.</p> <p>5 Q. Gene writes them and asks why</p> <p>6 they're attending your October meeting. Did</p> <p>7 Craig share this with you? Have you seen</p> <p>8 this e-mail before?</p> <p>9 A. I have not.</p> <p>10 Q. Did Craig come to your meeting?</p> <p>11 A. He did.</p> <p>12 Q. Gene's question is, "My</p> <p>13 question is: Why should USDA offer an animal</p> <p>14 welfare program that is competitive to the</p> <p>15 UEP Certified program - a program that is</p> <p>16 science-based, endorsed by FMI, NCCR, the</p> <p>17 National Grocers Association and the</p> <p>18 International Egg Commission?"</p> <p>19 What's your reaction to that</p> <p>20 question?</p> <p>21 A. The USDA has a Process Verified</p> <p>22 Program requiring federal verification. It's</p> <p>23 an ISO, ISO 9001 certification program for</p> <p>24 quality management systems. That was the</p> <p>25 alternative program that I was going to</p>
<p style="text-align: right;">Page 115</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 to that be?</p> <p>3 A. False. It's not true. I will</p> <p>4 add to that statement that as my -- as the</p> <p>5 documents will verify, my intent was to</p> <p>6 provide a forum for industry. I developed an</p> <p>7 alternative animal welfare program as a</p> <p>8 competing program and that I believe in</p> <p>9 co-existence if that would be the course. If</p> <p>10 he would leave me alone, I'll leave him</p> <p>11 alone.</p> <p>12 - - -</p> <p>13 (Exhibit Klippen-16, E-mail</p> <p>14 chain, Bates CM00727158 - CM00727161,</p> <p>15 was marked for identification.)</p> <p>16 - - -</p> <p>17 BY MR. PIZZIRUSSO:</p> <p>18 Q. I'm handing you what's been</p> <p>19 marked Klippen-16, Bates CM00727158 to 161.</p> <p>20 On page 4, the last page, Gene writes to</p> <p>21 Craig Morris, Roger Glasshoff and Charles</p> <p>22 Johnson. Do you know who those people are?</p> <p>23 A. I do. Yes.</p> <p>24 Q. Are they -- who are they?</p> <p>25 A. They are USDA employees within</p>	<p style="text-align: right;">Page 117</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 develop and I did develop for the egg</p> <p>3 industry. And Craig Morris was very</p> <p>4 supportive of my doing so.</p> <p>5 Q. And Craig, in fact, sends a</p> <p>6 lengthy response and then Gene responds again</p> <p>7 on page 2, "How can USDA approve an</p> <p>8 individual egg producer that may be meeting</p> <p>9 animal welfare guidelines on only 10% - 20%</p> <p>10 of their production when the remaining hens</p> <p>11 are kept at 48...inches. When the remaining</p> <p>12 houses can still backfill cages, can</p> <p>13 commingle eggs, can use a feed withdrawal</p> <p>14 molt, etc. How can a company use a marketing</p> <p>15 program that implies that 'company' is</p> <p>16 approved by USDA to use the Processed</p> <p>17 Verified seal when in fact most of the</p> <p>18 company's production may not be meeting any</p> <p>19 acceptable Animal Welfare Guidelines. I'm</p> <p>20 sure our Scientific Advisory Committee would</p> <p>21 have concerns. I'm sure the retail and</p> <p>22 foodservice market would have concerns if</p> <p>23 they knew their supplier was only meeting</p> <p>24 guidelines on a few birds."</p> <p>25 Did you hear any concerns from</p>

<p style="text-align: right;">Page 118</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the retail and foodservice market like that</p> <p>3 about your Process Verified Program?</p> <p>4 A. I did not. Just the opposite.</p> <p>5 I presented the program to Wal-Mart. They</p> <p>6 made that part of their supplier guidelines</p> <p>7 in addition to the UEP certified because they</p> <p>8 could see the detail of this Process Verified</p> <p>9 Program with the documentation to ensure that</p> <p>10 there was no commingling of the eggs. It's a</p> <p>11 very extensive documentation.</p> <p>12 Q. And, in fact, when Craig</p> <p>13 responds on page 1, he uses USDA organic as</p> <p>14 an example, and he says, "Take USDA Organic</p> <p>15 as an example. Can a company sell both</p> <p>16 organic and non organic products? Yes, they</p> <p>17 can. Are...those who purchase USDA Organic</p> <p>18 products out there that believe they are more</p> <p>19 environmentally sustainable for this planet</p> <p>20 we live on? Yes, they are. Then it would</p> <p>21 beg the question, should AMS allow the USDA</p> <p>22 Organic seal to go on products of companies</p> <p>23 that sell both USDA Organic and conventional</p> <p>24 products?"</p> <p>25 Do you know if UEP objected to</p>	<p style="text-align: right;">Page 120</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 about commingling of those kinds of products</p> <p>3 that you've seen with their concerns about</p> <p>4 making sure that there was 100 percent</p> <p>5 compliance with UEP Certified Guidelines?</p> <p>6 MR. MCKENNEY: Same objections.</p> <p>7 THE WITNESS: I have not seen</p> <p>8 UEP object to anything that was</p> <p>9 organic or labeled as organic. I am</p> <p>10 familiar with the objections that they</p> <p>11 had concerning my developing a Process</p> <p>12 Verified Program with USDA oversight.</p> <p>13 MR. PIZZIRUSSO: I think we need</p> <p>14 to change tapes. Why don't we just</p> <p>15 take a break now.</p> <p>16 VIDEOGRAPHER: Going off the</p> <p>17 record at 12:23 p.m. This is the end</p> <p>18 of tape number two.</p> <p>19 - - -</p> <p>20 (A recess was taken.)</p> <p>21 - - -</p> <p>22 VIDEOGRAPHER: We are on the</p> <p>23 record. 1:10 p.m. This is the</p> <p>24 beginning of tape number three.</p> <p>25 - - -</p>
<p style="text-align: right;">Page 119</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 UEP producers selling organic eggs and</p> <p>3 non-organic eggs?</p> <p>4 MR. MCKENNEY: Objection to</p> <p>5 form. Lacks foundation. Calls for</p> <p>6 speculation.</p> <p>7 THE WITNESS: I do not know of</p> <p>8 any objections.</p> <p>9 BY MR. PIZZIRUSSO:</p> <p>10 Q. Are you aware that there are</p> <p>11 producers that sold organic and also</p> <p>12 non-organic eggs?</p> <p>13 MR. MCKENNEY: Same objections.</p> <p>14 THE WITNESS: I am aware there</p> <p>15 are producers that are selling organic</p> <p>16 eggs and non-organic eggs, yes.</p> <p>17 BY MR. PIZZIRUSSO:</p> <p>18 Q. And there are some producers</p> <p>19 that sell cage free eggs and caged egg as</p> <p>20 well?</p> <p>21 A. That's correct.</p> <p>22 MR. MCKENNEY: Same objection.</p> <p>23 BY MR. PIZZIRUSSO:</p> <p>24 Q. But have you seen any kind of</p> <p>25 the same reaction from UEP with concerns</p>	<p style="text-align: right;">Page 121</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit Klippen-17, 10/31/06</p> <p>3 E-mail, Bates UE0807951, was marked</p> <p>4 for identification.)</p> <p>5 - - -</p> <p>6 BY MR. PIZZIRUSSO:</p> <p>7 Q. I'm showing you what's been</p> <p>8 marked as Klippen-17, UE0807951, an e-mail</p> <p>9 dated October 31, 2006, from Gene Gregory to</p> <p>10 Jeffrey Armstrong. It appears to be sent the</p> <p>11 day after your meeting. And starting with</p> <p>12 the third paragraph, Gene says to Jeff,</p> <p>13 "Since leaving UEP - Ken has been contracted</p> <p>14 with the Sparboe Company to represent them in</p> <p>15 Washington, D.C. to undermine our animal</p> <p>16 welfare and environmental programs along with</p> <p>17 UEP itself. We have heard from departments</p> <p>18 in D.C. of things said against us and our</p> <p>19 programs."</p> <p>20 Is this correct?</p> <p>21 A. No.</p> <p>22 Q. And then the next paragraph,</p> <p>23 "We have now heard from some of the producers</p> <p>24 that attended yesterday's meeting and know</p> <p>25 that Sparboe is the leading advocate of</p>



<p style="text-align: right;">Page 122</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 creating a new trade organization to</p> <p>3 represent the industry and they were trying</p> <p>4 to recruit members through yesterday's</p> <p>5 meeting. (On a side note - from what I heard</p> <p>6 from a few producers that attended, they</p> <p>7 think Sparboe and Klippen are not getting</p> <p>8 very much support for a new organization)."</p> <p>9 Can you respond to that?</p> <p>10 A. Sparboe was not directing that</p> <p>11 we form a new organization. I had a slide</p> <p>12 presentation, I had intended to bring up the</p> <p>13 subject because there were other producers</p> <p>14 that were indicating that it was worthy of</p> <p>15 discussion. During the course of the</p> <p>16 meeting, one of the producers there said I</p> <p>17 don't think we're ready to have that</p> <p>18 discussion. And I didn't even go through</p> <p>19 those slides. So that is not a correct</p> <p>20 statement.</p> <p>21 Q. Then at the bottom -- or</p> <p>22 starting with, let's see, six paragraphs</p> <p>23 down, "Dr. Craig Morris from USDA-AMS was</p> <p>24 invited and attended the meeting and spoke to</p> <p>25 the group about the USDA Processed Verified</p>	<p style="text-align: right;">Page 124</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 point I want to make. Should Klippen or</p> <p>3 Sparboe contact you or any other committee</p> <p>4 member wanting your assistance, I would hope</p> <p>5 you would stay with UEP and not help the</p> <p>6 creation of a competitive program.</p> <p>7 Don't forward my email to</p> <p>8 anyone. Think about it and then put it in</p> <p>9 your own words if you want to communicate</p> <p>10 with the committee.</p> <p>11 Did you contact anyone on the</p> <p>12 Scientific Committee about assisting you with</p> <p>13 your program?</p> <p>14 A. I did not.</p> <p>15 Q. Did it surprise you that Gene</p> <p>16 would write this to the Scientific Committee</p> <p>17 members?</p> <p>18 A. It does not. I've never seen</p> <p>19 this before.</p> <p>20 - - -</p> <p>21 (Exhibit Klippen-18, 11/9/06</p> <p>22 E-mail, Bates UE0806429, was marked</p> <p>23 for identification.)</p> <p>24 - - -</p> <p>25 BY MR. PIZZIRUSSO:</p>
<p style="text-align: right;">Page 123</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Program whereby a company can have their own</p> <p>3 animal welfare program and USDA will verify</p> <p>4 the program. The individual program or a new</p> <p>5 association program would not have to have a</p> <p>6 100% commitment on all birds, could backfill</p> <p>7 cages, could use feed withdrawal molt, etc.</p> <p>8 USDA would want them to have a program</p> <p>9 supposedly supported by a scientific</p> <p>10 committee or scientist. It is a bull shit</p> <p>11 program."</p> <p>12 What's your reaction to that?</p> <p>13 A. The USDA Process Verified</p> <p>14 Program that we did put together is an animal</p> <p>15 welfare program that does have the USDA</p> <p>16 backing. I did use a group of scientists in</p> <p>17 the formation of the program. It did not</p> <p>18 require a 100 percent commitment of all the</p> <p>19 birds. That is a correct statement. It did</p> <p>20 allow for backfilling cages. That is a</p> <p>21 correct statement. It did not call for a</p> <p>22 feed withdrawal molt. So that's an incorrect</p> <p>23 statement. As to his conclusions, I think</p> <p>24 that speaks for itself.</p> <p>25 Q. Then he says, Here is the final</p>	<p style="text-align: right;">Page 125</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'm now handing you what's been</p> <p>3 marked Klippen-18. This is UE0806429. It</p> <p>4 appears to be an e-mail from Gene Gregory</p> <p>5 dated November 9, 2006, to Toby Catherman and</p> <p>6 Terry Baker. Do you know who Toby Catherman</p> <p>7 and Terry Baker are?</p> <p>8 A. I do.</p> <p>9 Q. Who are they?</p> <p>10 A. Both had served Michael Foods.</p> <p>11 Toby Catherman has since retired. Toby</p> <p>12 Catherman was president of United Egg</p> <p>13 Association when I was representing United</p> <p>14 States Egg Association in Washington, D.C.</p> <p>15 Terry Baker is still working at Michael</p> <p>16 Foods.</p> <p>17 Q. Have you seen this e-mail</p> <p>18 before?</p> <p>19 A. I have not.</p> <p>20 Q. Are you surprised that Gene</p> <p>21 Gregory would contact Toby and Terry and</p> <p>22 express concern about them attending your</p> <p>23 meeting?</p> <p>24 A. I am not surprised.</p> <p>25 Q. So in the first part of this</p>

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<p style="text-align: right;">Page 126</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 e-mail he says, "I've thought a lot about the</p> <p>3 meeting Ken Klippen held in Chicago and you</p> <p>4 attended and have waited a while to write you</p> <p>5 with my concerns.</p> <p>6 "I've been told that Ken is</p> <p>7 telling people that he has 40 million hens</p> <p>8 committed to his program (whatever that is)</p> <p>9 and therefore he must be including Michael</p> <p>10 Foods. So I assume from what he is telling</p> <p>11 people...you have made a commitment."</p> <p>12 Is that correct, are those</p> <p>13 statements that you made?</p> <p>14 A. Yes, I had -- in terms of</p> <p>15 numbers of hens represented at that meeting</p> <p>16 in Chicago was about 40 million laying hens.</p> <p>17 Michael Foods was present. And Terry and</p> <p>18 Toby were both present for that meeting.</p> <p>19 Q. He says then, I'm also</p> <p>20 disappointed that Toby has agreed to serve on</p> <p>21 a committee because this gives credibility to</p> <p>22 Ken's efforts.</p> <p>23 It is my opinion that this</p> <p>24 issue is being pushed by one individual</p> <p>25 company and there are a couple other</p>	<p style="text-align: right;">Page 128</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Did you provide any such</p> <p>3 information to the FTC and Washington, D.C.</p> <p>4 Attorney General?</p> <p>5 A. I did meet with USDA Craig</p> <p>6 Morris and his boss. I did have meetings</p> <p>7 with not the FDA, but with the Federal Trade</p> <p>8 Commission. It had nothing to do with the</p> <p>9 UEP Certified Program. It was dealing with</p> <p>10 my creation of a competing program that's</p> <p>11 called the Process Verified Program.</p> <p>12 Q. That would have been after this</p> <p>13 period anyway, right, I mean this is just</p> <p>14 after your initial meeting in October 2006?</p> <p>15 A. That's correct.</p> <p>16 Q. So you didn't meet with the FTC</p> <p>17 before then about your program, did you?</p> <p>18 A. No, I did not.</p> <p>19 MR. MCKENNEY: Objection. Form.</p> <p>20 BY MR. PIZZIRUSSO:</p> <p>21 Q. And then if you scroll down a</p> <p>22 little bit, third from the bottom he says,</p> <p>23 "We believe individuals within the company</p> <p>24 pushing this program really wants to destroy</p> <p>25 the UEP Certified program and Ken needs a</p>
<p style="text-align: right;">Page 127</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 companies that are looking for ways to</p> <p>3 misrepresent their eggs in the marketplace.</p> <p>4 They have tried every way possible to avoid</p> <p>5 the UEP Certified program and have in fact</p> <p>6 been in the market place disparaging it and</p> <p>7 saying things like the only reason UEP</p> <p>8 created the program was to raise egg prices.</p> <p>9 What's your reaction to that?</p> <p>10 A. I think I'm repeating myself</p> <p>11 when I say that the intention was not to</p> <p>12 eliminate what was currently available to the</p> <p>13 egg industry. It was to provide the egg</p> <p>14 industry with an alternative program. As it</p> <p>15 relates to a single company or an individual</p> <p>16 company that's pushing it, that is incorrect.</p> <p>17 Q. And then he says, While we</p> <p>18 can't positively -- "While we can't prove</p> <p>19 positively, we believe they have been in</p> <p>20 Washington, D.C. calling on Congressmen, USDA</p> <p>21 and FDA disparaging our program and</p> <p>22 misrepresenting our relationship with AEB. I</p> <p>23 also believe they may have provided</p> <p>24 information to the FTC and the Washington,</p> <p>25 D.C. Attorney General that hurt our case."</p>	<p style="text-align: right;">Page 129</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 job."</p> <p>3 Did you do this because you</p> <p>4 needed a job?</p> <p>5 A. I did not. In fact, when I</p> <p>6 left in 2004, I fully intended to leave the</p> <p>7 egg industry altogether. And it wasn't until</p> <p>8 certain members of the egg industry and now</p> <p>9 many more have come to me and said we need</p> <p>10 your help, can you help us with animal</p> <p>11 welfare. We were creating a program that</p> <p>12 would co-exist with UEP certified.</p> <p>13 Q. And the last sentence he says,</p> <p>14 "So I'll close by saying I'm disappointed</p> <p>15 that Michael Foods may be a part of the</p> <p>16 competitive program whose intent is to</p> <p>17 destroy the UEP Certified program."</p> <p>18 I think you responded on this</p> <p>19 before, but was it your intent to destroy the</p> <p>20 UEP Certified Program?</p> <p>21 A. It was not. But I'll tell you,</p> <p>22 this demonstrates the nature of his not</p> <p>23 wanting to have anything to compete with his</p> <p>24 UEP Certified Program. And I mentioned in</p> <p>25 earlier testimony how he would sometimes</p>

<p style="text-align: right;">Page 130</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 abuse verbally people. This was -- this is</p> <p>3 an example of that verbal abuse.</p> <p>4 - - -</p> <p>5 (Exhibits Klippen-19, 11/7/06</p> <p>6 Fax, Bates UE0218114 and Klippen-20,</p> <p>7 34 Attendees in Chicago Marriott</p> <p>8 O'Hare Hotel October 20, 2006, Bates</p> <p>9 UE0218113, were marked for</p> <p>10 identification.)</p> <p>11 - - -</p> <p>12 BY MR. PIZZIRUSSO:</p> <p>13 Q. I'm handing you what have been</p> <p>14 marked as Exhibits 19 and 20. 19 is</p> <p>15 UE 218114. 20 is 218113. It looks like Ron</p> <p>16 Truex faxed this list to Gene Gregory on</p> <p>17 October 7, 2006. Who is Ron Truex?</p> <p>18 A. He's with a company called</p> <p>19 Creighton Brothers located in Indiana.</p> <p>20 Q. Was he at your October 30th</p> <p>21 meeting?</p> <p>22 A. He was not. Wait a minute, let</p> <p>23 me check that. I may have spoken</p> <p>24 prematurely. Yes, he was. I can see his</p> <p>25 name there. I forgot.</p>	<p style="text-align: right;">Page 132</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'm now handing you what's been</p> <p>3 marked Exhibit 21, UE0707085 to 87. And</p> <p>4 starting at page 2, it appears to be an</p> <p>5 e-mail -- actually, I'm sorry, starting on</p> <p>6 page 1, appears to be an e-mail from Chad</p> <p>7 Gregory to Alan Andrews. Do you know who</p> <p>8 Alan Andrews is?</p> <p>9 A. I do.</p> <p>10 Q. Who is he?</p> <p>11 A. At this time he was working for</p> <p>12 Sparboe Farms.</p> <p>13 Q. And have you seen this e-mail</p> <p>14 before?</p> <p>15 A. I have not.</p> <p>16 Q. And so Chad asked some</p> <p>17 questions of Andrew. He says, this is</p> <p>18 October -- I'm sorry, November 8, 2006, after</p> <p>19 your meeting. "Got two questions for you,</p> <p>20 and as a friend I hope you will consider them</p> <p>21 and answer them..."</p> <p>22 First, after attending the</p> <p>23 October 30th meeting in Chicago, do you still</p> <p>24 have the assumption that this anti-UEP and</p> <p>25 Anti-100% is not be driven by Sparboe (Mark</p>
<p style="text-align: right;">Page 131</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Was Gene Gregory at the UEP --</p> <p>3 at your October 30th meeting?</p> <p>4 A. He was not.</p> <p>5 Q. Do you find it surprising that</p> <p>6 Ron sent this list to Gene Gregory of the</p> <p>7 attendees at your meeting?</p> <p>8 A. No, I do not. I've known Ron</p> <p>9 for a number of years. I knew that he was</p> <p>10 very close to Gene Gregory. I am surprised</p> <p>11 that he did send it, but by the same token, I</p> <p>12 can recognize because of his relationship</p> <p>13 with Gene, he would likely do something like</p> <p>14 that.</p> <p>15 Q. And so are these -- is this</p> <p>16 list correct, Exhibit 20, of the attendees at</p> <p>17 the October 30th meeting? Does this look</p> <p>18 like everybody who was there?</p> <p>19 A. Yes, it does.</p> <p>20 - - -</p> <p>21 (Exhibit Klippen-21, E-mail</p> <p>22 chain, Bates UE0707085 - UE0707087,</p> <p>23 was marked for identification.)</p> <p>24 - - -</p> <p>25 BY MR. PIZZIRUSSO:</p>	<p style="text-align: right;">Page 133</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Friedow especially)? I would be very</p> <p>3 interested in your thoughts on this after you</p> <p>4 were at the meeting.</p> <p>5 Was Mark Friedow driving this</p> <p>6 issue?</p> <p>7 A. He was not.</p> <p>8 Q. His next question is, Secondly,</p> <p>9 and this one is a little more technical. You</p> <p>10 are a guy of numbers and understands market</p> <p>11 situations real well. I respect you for</p> <p>12 that. Considering the following -- consider</p> <p>13 the following data/info and please provide me</p> <p>14 your thoughts. I'm not going to read all</p> <p>15 these numbers, but he goes through various</p> <p>16 quotes for eggs and says at the bottom of</p> <p>17 this page 1, "Ask yourself - how much money</p> <p>18 did we make for Sparboe during this time</p> <p>19 period and with the export? The way I have</p> <p>20 it figured is: 12 million layers at a rate</p> <p>21 of lay 73% = 8,760,000 eggs laid per day."</p> <p>22 The next page, "That's 730,000</p> <p>23 dozens per day produced at an increase of 24</p> <p>24 cents in the market due to the export.</p> <p>25 "That's \$175,200 per day of</p>

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<p style="text-align: right;">Page 134</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 better market.</p> <p>3 "That's 2,628,000 for the</p> <p>4 15 days since we decided to take the export -</p> <p>5 WOW! That's just Sparboe's scenario."</p> <p>6 Have you seen discussions</p> <p>7 before like this of exports creating this</p> <p>8 type of increase in egg prices?</p> <p>9 MR. MCKENNEY: Objection to</p> <p>10 form. Lacks foundation. Calls for</p> <p>11 speculation.</p> <p>12 THE WITNESS: I have not.</p> <p>13 BY MR. PIZZIRUSSO:</p> <p>14 Q. Then he says, "Honestly, what</p> <p>15 other organization do you know that provides</p> <p>16 this kind of positive economic impact to</p> <p>17 their ENTIRE industry? And I'm not talking</p> <p>18 about UEP staff or trying to pat ourselves on</p> <p>19 the back here. This decision (and all</p> <p>20 others) was made by UEP/USEM producer</p> <p>21 leaders. I'm very proud of that.</p> <p>22 "I wish Sparboe (and Klippen)</p> <p>23 would recognize just SOME of the positive</p> <p>24 things that we do and re-join UEP/USEM again</p> <p>25 for all of those positive things. Yeah, with</p>	<p style="text-align: right;">Page 136</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MR. PIZZIRUSSO: I'm sorry, 22</p> <p>3 and 23.</p> <p>4 MS. ANDERSON: 22 is?</p> <p>5 MR. PIZZIRUSSO: 22 is -- I'll</p> <p>6 clarify. 22 is MFI0064584. 23 is</p> <p>7 MFI0064585.</p> <p>8 BY MR. PIZZIRUSSO:</p> <p>9 Q. Do you recognize these</p> <p>10 documents?</p> <p>11 A. I do.</p> <p>12 Q. What are they?</p> <p>13 A. One is my letter that I sent to</p> <p>14 Jeff Henning, to Toby Catherman, Dave Rettig,</p> <p>15 Jim Adams, Mark Friedow and Alan Andrews.</p> <p>16 I've invited Mark Friedow to participate on</p> <p>17 the call since Alan was going to be</p> <p>18 traveling. And Exhibit Number 23 was the</p> <p>19 proposal that I was submitting for them to</p> <p>20 consider in developing an alternative animal</p> <p>21 welfare program.</p> <p>22 Q. And is this a true and accurate</p> <p>23 copy of that proposal in your e-mail?</p> <p>24 A. Yes, it is.</p> <p>25 Q. You can put that aside.</p>
<p style="text-align: right;">Page 135</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 any organization there are going to be things</p> <p>3 that people agree on and disagree on."</p> <p>4 I just don't know about you -</p> <p>5 but if someone improved my financial</p> <p>6 portfolio by \$2.6 million in just 15 days I</p> <p>7 could look past a few negative things (make</p> <p>8 that a lot of negative things).</p> <p>9 What's your reaction to that?</p> <p>10 A. That I'm surprised anybody</p> <p>11 would put that down on paper. I was just not</p> <p>12 privy to this information.</p> <p>13 - - -</p> <p>14 (Exhibits Klippen-22, 11/3/06</p> <p>15 E-mail, Bates MFI0064584, and</p> <p>16 Klippen-23, Proposal, Bates MFI0064585</p> <p>17 - MFI0064592, were marked for</p> <p>18 identification.)</p> <p>19 - - -</p> <p>20 BY MR. PIZZIRUSSO:</p> <p>21 Q. I'm now showing you what's been</p> <p>22 marked as Exhibit 21 and 22. Exhibit 21 is</p> <p>23 MFI0064584. 22 is MFI0064585 to 592.</p> <p>24 MR. NOVAK: It should be 22 and</p> <p>25 23.</p>	<p style="text-align: right;">Page 137</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (Exhibit Klippen-24, 12/7/06</p> <p>4 E-mail, Bates UE0808012, was marked</p> <p>5 for identification.)</p> <p>6 - - -</p> <p>7 BY MR. PIZZIRUSSO:</p> <p>8 Q. I'm now showing you a copy of</p> <p>9 what's been marked as Klippen-24, UE0808012.</p> <p>10 It's a letter from Gene Gregory to several</p> <p>11 people. Have you seen this before?</p> <p>12 A. I have not.</p> <p>13 Q. And he in the second paragraph</p> <p>14 says, "Here is the problem. Ken Klippen and</p> <p>15 Sparboe Company are trying to create a</p> <p>16 competitive animal welfare program that does</p> <p>17 not require a company to implement animal</p> <p>18 welfare guidelines on 100% of their company</p> <p>19 owned or contract production. It may not</p> <p>20 even have requirements that prohibit</p> <p>21 backfilling cages or commingling eggs. A</p> <p>22 company could have animal welfare guidelines</p> <p>23 for only the number of layers to produce eggs</p> <p>24 for an individual customer while at the same</p> <p>25 time providing as little as 48 to 53 square</p>

35 (Pages 134 - 137)

<p style="text-align: right;">Page 138</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 inches of space for all remaining birds."</p> <p>3 Now, your program did have a</p> <p>4 prohibition on commingling eggs, did it not?</p> <p>5 A. It did. In fact, the USDA</p> <p>6 would never have allowed a commingling of</p> <p>7 eggs under the Process Verified Program.</p> <p>8 That is why it was such a very detailed and</p> <p>9 document intensive program.</p> <p>10 Q. If you scroll down to the</p> <p>11 bottom, the paragraph that starts, "I'm</p> <p>12 asking...", it says, "I'm asking that you</p> <p>13 write me a short letter on your letterhead</p> <p>14 and email or fax to me as quickly as possible</p> <p>15 expressing your concern (if you agree with</p> <p>16 me). I think it is important that Ryn..., "</p> <p>17 R-Y-N, "... (representing the largest egg</p> <p>18 market in the U.S.), Mark (as chairman of the</p> <p>19 UEP Animal Welfare Committee), Paul (as the</p> <p>20 UEP Public Relations Chairman) and Ron</p> <p>21 (representing the largest retail market in</p> <p>22 the U.S.) convey your concerns on this</p> <p>23 issue."</p> <p>24 Were you aware that he was</p> <p>25 asking these members to express concerns to</p>	<p style="text-align: right;">Page 140</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 raised by Gene."</p> <p>3 What did you mean by that?</p> <p>4 A. Mr. Day had expressed to, in</p> <p>5 fact, my attorney was with me, had expressed</p> <p>6 to me that Gene was very much opposed to us</p> <p>7 developing a competitive program, and as long</p> <p>8 as I abided by all the rules and regulations</p> <p>9 within the Process Verified Program, that</p> <p>10 they were going to continue to support us</p> <p>11 developing that program. He wanted to have</p> <p>12 some reassurances that we were actually</p> <p>13 abiding up front as we were in the process of</p> <p>14 developing. It took approximately one year</p> <p>15 for me just to write the program. So it was</p> <p>16 very intensive. So the questions like the</p> <p>17 scientific basis, he wanted to make sure that</p> <p>18 I had scientists, which I did provide. USDA</p> <p>19 was in touch with each one of those</p> <p>20 scientists to confirm. The comment about</p> <p>21 Gene being concerned with cheaters, he's</p> <p>22 talking about people, I believe, that weren't</p> <p>23 100 percent on the program. Of course the</p> <p>24 program was not meant to make 100 percent.</p> <p>25 Some of the statements he made earlier about</p>
<p style="text-align: right;">Page 139</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the USDA about your participation in this</p> <p>3 program?</p> <p>4 A. I was not.</p> <p>5 - - -</p> <p>6 (Exhibit Klippen-25, 12/20/06</p> <p>7 E-mail, Bates SF112543, was marked for</p> <p>8 identification.)</p> <p>9 - - -</p> <p>10 BY MR. PIZZIRUSSO:</p> <p>11 Q. I've handed you what's been</p> <p>12 marked as Klippen Exhibit 25. Do you</p> <p>13 recognize this document?</p> <p>14 A. I do.</p> <p>15 Q. Did you write it?</p> <p>16 A. I did.</p> <p>17 Q. Is it a true and accurate copy?</p> <p>18 A. Yes.</p> <p>19 Q. And you say you met with Lloyd</p> <p>20 Day at the USDA and Gene had just been there?</p> <p>21 A. Correct.</p> <p>22 Q. And at the bottom of the first</p> <p>23 paragraph, "The Administrator confirmed that</p> <p>24 Gene was bent on stopping us, and that I</p> <p>25 could help them with responses to questions</p>	<p style="text-align: right;">Page 141</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 my -- was pushing for 48 square inches or 53</p> <p>3 square inches, that is not correct. As</p> <p>4 anyone could see from the actual Process</p> <p>5 Verified Program, the cage density or the</p> <p>6 spacing was identical to UEP because that's</p> <p>7 what the science supported.</p> <p>8 Let me just read this third one</p> <p>9 about responding to animal rights complaints.</p> <p>10 Q. Actually I only had a question</p> <p>11 about the last one if I could point you</p> <p>12 there. It says, "Question: Is there any</p> <p>13 reconciling with UEP? I said I was willing</p> <p>14 to try, and had done so, only to be rebuffed.</p> <p>15 I was open to their suggestions. Their</p> <p>16 animal welfare program is a revenue source</p> <p>17 and any competition, such as our program,</p> <p>18 could jeopardize that revenue income."</p> <p>19 What did you mean by that?</p> <p>20 A. They asked me to see if there</p> <p>21 could be some reconciliation because of how</p> <p>22 Gene was treating the staff at USDA.</p> <p>23 Q. By "they," you mean USDA asked</p> <p>24 you if there could be any reconciliation?</p> <p>25 A. Yes. They said can you</p>

<p style="text-align: right;">Page 142</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 reconcile. I knew Mr. Day. I knew Craig</p> <p>3 Morris. I did indicate that I would make the</p> <p>4 effort. And that's when we had dinner with</p> <p>5 Gene and with his counsel. And I called</p> <p>6 Craig Morris that evening to say that I can</p> <p>7 only listen to being called traitor so many</p> <p>8 times before I was going to end the</p> <p>9 conversation. I did acknowledge that they</p> <p>10 are not wanting to have a competitive program</p> <p>11 for animal welfare because that was a money</p> <p>12 making program for them.</p> <p>13 Q. What did you mean by that?</p> <p>14 A. They charge their members a fee</p> <p>15 to participate in the UEP Certified Program.</p> <p>16 That fee is -- today it's even more expensive</p> <p>17 to pay that fee than it is to pay the</p> <p>18 membership dues in the organization. So it</p> <p>19 is a money making venture for them. They use</p> <p>20 it to pay GolinHarris, Mitch Head and the</p> <p>21 promotional efforts they have in trying to</p> <p>22 promote that program to the retailers. If</p> <p>23 some egg companies were to go to the</p> <p>24 retailers and say, well, we're not UEP</p> <p>25 certified, but we are process verified and</p>	<p style="text-align: right;">Page 144</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 door to the practice of commingling eggs</p> <p>3 produced under an animal welfare program with</p> <p>4 other eggs that were not so produced and that</p> <p>5 would make a mockery of the Process Verified</p> <p>6 Program seal. AMS would be derelict in its</p> <p>7 duty to allow such a program without assuring</p> <p>8 that no commingling would occur."</p> <p>9 Do you know if the USDA agreed</p> <p>10 with this position?</p> <p>11 A. I do not know.</p> <p>12 Q. Will they approve your -- did</p> <p>13 they approve your program without use of a</p> <p>14 100 percent rule?</p> <p>15 A. Let me correct that. Yeah.</p> <p>16 They -- let me rephrase that.</p> <p>17 I don't know how they responded</p> <p>18 to this letter. They did approve the PVP</p> <p>19 program because there's -- the documentation</p> <p>20 is sufficient for a federal inspector to</p> <p>21 ensure that there is no commingling at any</p> <p>22 point in the process chain. So when the</p> <p>23 allegations are that it would make a mockery</p> <p>24 of the Process Verified Program, USDA would</p> <p>25 ensure that that would not take place.</p>
<p style="text-align: right;">Page 143</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the retailers accepted that, like Wal-Mart</p> <p>3 has, UEP saw that as undermining their</p> <p>4 program.</p> <p>5 - - -</p> <p>6 (Exhibit Klippen-26, 1/29/07</p> <p>7 Letter, Bates UE0575403 - UE0575405,</p> <p>8 was marked for identification.)</p> <p>9 - - -</p> <p>10 BY MR. PIZZIRUSSO:</p> <p>11 Q. I'm now handing you a copy of</p> <p>12 what's been marked as Klippen-26. Bates</p> <p>13 labeled UE0575403 to 05. Letter dated</p> <p>14 January 29, 2007, from Gene Gregory to Lloyd</p> <p>15 Day.</p> <p>16 Have you ever seen this before?</p> <p>17 A. I have not.</p> <p>18 Q. It appears to be a letter,</p> <p>19 again, objecting to your Process Verified</p> <p>20 Program. And at the bottom of page 1 -- I'm</p> <p>21 sorry, let's go to page 2, it says, "Instead,</p> <p>22 the agency should require that 100% of a farm</p> <p>23 or company's output be produced in accordance</p> <p>24 with the standards it adopts to secure the</p> <p>25 PVP seal. To do anything else will open the</p>	<p style="text-align: right;">Page 145</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And to your knowledge, was UEP</p> <p>3 ever concerned with this practice of</p> <p>4 commingling eggs with organic versus</p> <p>5 non-organic?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. And of cage free versus</p> <p>8 non-cage free?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. And then on the next page, at</p> <p>11 the top of page 3, it says, "If AMS approved</p> <p>12 a PVP (or any other level of audit program)</p> <p>13 that violated these principles, we would be</p> <p>14 concerned that such an action could undermine</p> <p>15 public confidence in all audit programs,</p> <p>16 including ours, and damage the agency's</p> <p>17 credibility and reputation for science-based</p> <p>18 arms-length auditing relationships. We</p> <p>19 believe such a program would be viewed as a</p> <p>20 sham and could be the subject of activist</p> <p>21 litigation as false and misleading</p> <p>22 advertising. The result would be a</p> <p>23 tremendous loss of credibility to the U.S.</p> <p>24 Department of Agriculture and this</p> <p>25 Administration and a huge economic loss to</p>

37 (Pages 142 - 145)



<p style="text-align: right;">Page 146</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the nation's egg producers."</p> <p>3 What's your reaction to that?</p> <p>4 A. I am touched that he's so</p> <p>5 concerned about USDA and their being able to</p> <p>6 authenticate their Process Verified Program.</p> <p>7 But I know Mr. Day, I know that he could see</p> <p>8 through what he's trying to say.</p> <p>9 - - -</p> <p>10 (Exhibit Klippen-27, Verified</p> <p>11 Process Control, Bates MOARK0035607 -</p> <p>12 MOARK0035610, was marked for</p> <p>13 identification.)</p> <p>14 - - -</p> <p>15 BY MR. PIZZIRUSSO:</p> <p>16 Q. I'm giving you a copy of what's</p> <p>17 been marked as Klippen-27, MOARK0035607 to</p> <p>18 610.</p> <p>19 Do you recognize this document?</p> <p>20 A. I do.</p> <p>21 Q. And what is it?</p> <p>22 A. It was -- when I formed an LLC,</p> <p>23 we called it the Verified Process Control to</p> <p>24 protect the people who are participating from</p> <p>25 any litigation, and this was a newsletter to</p>	<p style="text-align: right;">Page 148</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is this a true and accurate</p> <p>3 copy of your process verified -- Verified</p> <p>4 Process Control newsletter?</p> <p>5 A. It is.</p> <p>6 - - -</p> <p>7 (Exhibit Klippen-28, 9/13/07</p> <p>8 E-mail, Bates UE0854224, was marked</p> <p>9 for identification.)</p> <p>10 - - -</p> <p>11 BY MR. PIZZIRUSSO:</p> <p>12 Q. I've given you a copy of what's</p> <p>13 been marked as Klippen Exhibit 28, UE0854224.</p> <p>14 It appears to be an e-mail from Mike McGriff</p> <p>15 to Gene Gregory and Chad Gregory dated</p> <p>16 September 13, 2007.</p> <p>17 Who is Mike McGriff, do you</p> <p>18 know?</p> <p>19 A. He was in charge of -- he came</p> <p>20 after I had left UEP, and he was actually</p> <p>21 involved in trying to get membership for the</p> <p>22 organization.</p> <p>23 Q. And he writes, "I think we may</p> <p>24 have already heard this but it was mentioned</p> <p>25 to me that Ken Klippen was trying to organize</p>
<p style="text-align: right;">Page 147</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 inform them of our progress in developing the</p> <p>3 Process Verified Program. And you can see at</p> <p>4 the bottom of the page, USDA had given us the</p> <p>5 okay to use their shield saying process</p> <p>6 verified on the cartons if we so chose.</p> <p>7 Q. At some point there was a</p> <p>8 discussion of USDA about using animal welfare</p> <p>9 on that shield as well. Is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. Whatever happened with that?</p> <p>12 A. They decided that it becomes</p> <p>13 kind of a lightning rod, and they chose to</p> <p>14 simply take that out and just use USDA</p> <p>15 process verified.</p> <p>16 Q. On the right-hand side it says,</p> <p>17 "What is Verified Process Control?" There's</p> <p>18 a lengthy description, I don't want to read</p> <p>19 it, but do you agree that that's a good</p> <p>20 description of what Verified Process Control</p> <p>21 is?</p> <p>22 A. Yes, it is. It shows that the</p> <p>23 extent of documentation for this quality</p> <p>24 management system surpasses any other program</p> <p>25 out there.</p>	<p style="text-align: right;">Page 149</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 an alternative egg organization. Klippen</p> <p>3 felt compelled to stand and ask a question or</p> <p>4 make a comment to every speaker, almost as if</p> <p>5 he was grandstanding as a voice of the</p> <p>6 industry, at least in Iowa."</p> <p>7 Do you know what Iowa</p> <p>8 conference he was referring to?</p> <p>9 A. It was a forum, it was called</p> <p>10 the Egg Industry Forum. And, yes, I was</p> <p>11 there. Since I had been the voice of the</p> <p>12 industry for many years, I did speak to</p> <p>13 the -- each speaker or many of the speakers.</p> <p>14 I don't remember all of the speakers.</p> <p>15 Q. Then he writes, "First Bruce</p> <p>16 Knight, then Darrell Trampel, then Don Bell.</p> <p>17 His question to Don... 'Is the Scientific</p> <p>18 Animal Welfare Committee almost through with</p> <p>19 their research and what is the response when</p> <p>20 HSUS takes comments from committee members</p> <p>21 (he specifically mentioned Joy Mench) and</p> <p>22 HSUS then says that even your own committee</p> <p>23 is against caged production. I'm not</p> <p>24 familiar with the comments by Joy Mench that</p> <p>25 Klippen was referring to but I thought Don</p>



<p style="text-align: right;">Page 150</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 answered the question appropriately."</p> <p>3 What were you referring to</p> <p>4 there or did that conversation occur?</p> <p>5 A. Yes, it did. Joy Mench is a</p> <p>6 scientist that's located on the West Coast.</p> <p>7 She had some concerns about even caging</p> <p>8 layers to begin with. So -- and Don Bell was</p> <p>9 on that committee, and I just simply wanted</p> <p>10 him to elicit his thoughts as to what her</p> <p>11 intentions were by challenging how the</p> <p>12 industry has progressed to the point where</p> <p>13 they were putting chickens in cages. I was</p> <p>14 also a speaker at that conference.</p> <p>15 - - -</p> <p>16 (Exhibit Klippen-29, E-mail</p> <p>17 chain, Bates CF0000613 - CF0000621,</p> <p>18 was marked for identification.)</p> <p>19 - - -</p> <p>20 BY MR. PIZZIRUSSO:</p> <p>21 Q. I'm now giving you a copy of</p> <p>22 what's been marked as Klippen-29, CF0000613</p> <p>23 to 621. It's a very lengthy e-mail chain.</p> <p>24 Let's start at the back. This, obviously the</p> <p>25 last page refers to Iowa Egg Industry</p>	<p style="text-align: right;">Page 152</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MR. PIZZIRUSSO: Yes.</p> <p>3 THE WITNESS: Okay.</p> <p>4 BY MR. PIZZIRUSSO:</p> <p>5 Q. "The reason for forwarding this</p> <p>6 to you all is you will see they have invited</p> <p>7 Ken Klippen to be a speaker and to talk about</p> <p>8 the USDA Processed Verified Program. Gene</p> <p>9 and I are totally insulted by:</p> <p>10 "1. Not even being invited to</p> <p>11 attend the Symposium.</p> <p>12 "2. Not being invited to also</p> <p>13 be a speaker and discuss the California</p> <p>14 Ballot threat and what is going on in CO and</p> <p>15 other states. Explain the HSUS attack.</p> <p>16 "3. Putting Klippen on the</p> <p>17 agenda and having him discuss a program that</p> <p>18 not a single egg producer is even on. This</p> <p>19 will give him and the program credibility</p> <p>20 which neither deserve."</p> <p>21 Are you aware of this</p> <p>22 controversy of you being invited to the Egg</p> <p>23 Industry Symposium?</p> <p>24 A. I was not. I'm not surprised,</p> <p>25 though.</p>
<p style="text-align: right;">Page 151</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Symposium that Debbie Murdock had sent to</p> <p>3 Chad Gregory, and it says, "Note Ken</p> <p>4 Klippen's talk, Debbie." Do you see that,</p> <p>5 the last page?</p> <p>6 A. Okay.</p> <p>7 Q. I think she's referring to an</p> <p>8 Iowa Egg Industry Symposium. Is this the</p> <p>9 symposium you were just referring to?</p> <p>10 A. This is a different symposium.</p> <p>11 This was the -- no, this was the symposium I</p> <p>12 was referring to, yes.</p> <p>13 Q. And then on the next page,</p> <p>14 moving from the back forward, Chad Gregory</p> <p>15 sends an e-mail to a whole bunch of people</p> <p>16 and says, "The reason for forwarding this to</p> <p>17 you all is that you will see they invited Ken</p> <p>18 Klippen to be a speaker...to talk about the</p> <p>19 USDA Processed Verified Program," among the</p> <p>20 last -- second to the last page from the</p> <p>21 back.</p> <p>22 MS. ANDERSON: I'm sorry, what's</p> <p>23 the Bates number?</p> <p>24 MR. PIZZIRUSSO: 620.</p> <p>25 MS. ANDERSON: Exhibit 29?</p>	<p style="text-align: right;">Page 153</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And then on page 619, moving</p> <p>3 one from the back. I'm not going to be able</p> <p>4 to pronounce this name, but X-I-N, Hongwei,</p> <p>5 H-O-N-G-W-E-I.</p> <p>6 A. Hongwei Xin.</p> <p>7 Q. Hongwei Xin. Do you know who</p> <p>8 that is?</p> <p>9 A. I do.</p> <p>10 Q. Who is that?</p> <p>11 A. He's a professor at Iowa State</p> <p>12 University.</p> <p>13 Q. So he sends this to Darrell</p> <p>14 Trampel, this e-mail chain. Do you know who</p> <p>15 Darrell Trampel is?</p> <p>16 A. He is also a professor at Iowa</p> <p>17 State University.</p> <p>18 Q. And then Darrell sends a</p> <p>19 lengthy response, if we move to page 617, and</p> <p>20 618, and at point 4c at the bottom of page</p> <p>21 618, he says, "This year's program for the</p> <p>22 Iowa Egg Industry Symposium has been</p> <p>23 completed, but as discussed with J.T. Dean</p> <p>24 last Friday afternoon via telephone..."</p> <p>25 Who is J.T. Dean?</p>

<p style="text-align: right;">Page 154</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. He works with his father Jim</p> <p>3 Dean. J.T. is the son, and they're a big egg</p> <p>4 company in Iowa.</p> <p>5 Q. "...but as discussed with J.T.</p> <p>6 Dean last Friday afternoon via telephone,</p> <p>7 Chad or Gene Gregory are welcome to speak for</p> <p>8 30-40 minutes at the end of our program on</p> <p>9 November 7 about animal welfare issues. I</p> <p>10 will use my opening comments to notify those</p> <p>11 in attendance of this addition to the</p> <p>12 program."</p> <p>13 Do you know if Chad or Gene</p> <p>14 ended up actually speaking at the program?</p> <p>15 A. They did not.</p> <p>16 Q. And then Chad writes back, if</p> <p>17 you turn to page 616, on the second paragraph</p> <p>18 he writes back to Dr. Trampel, "However - I</p> <p>19 believe you requested (with very good</p> <p>20 intentions) ideas and speakers for this</p> <p>21 year's symposium and you were given some</p> <p>22 suggestions that were very misleading. I</p> <p>23 believe you, and this symposium, were used as</p> <p>24 a vehicle by a couple of people to try and</p> <p>25 promote a program that will divide this</p>	<p style="text-align: right;">Page 156</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 play the game. UEP limited their market</p> <p>3 access and forced them into a corner. So</p> <p>4 they have to make a new game where they can</p> <p>5 compete - it's just business. Then it had to</p> <p>6 get personal and now the fence is unable to</p> <p>7 be mended."</p> <p>8 What's your reaction to that</p> <p>9 comment from J.T. Dean?</p> <p>10 A. I sense his frustration that</p> <p>11 he's been dragged into something. I think</p> <p>12 he's accurate when he said this is the result</p> <p>13 of this 100 percent rule being implemented.</p> <p>14 I don't know why he has targeted Sparboe in</p> <p>15 this, to say the least, because Sparboe was</p> <p>16 not behind this. I think it just</p> <p>17 demonstrates that Chad is much like his</p> <p>18 father as it relates to trying to stop</p> <p>19 anything that might compete with them.</p> <p>20 Q. And then he says the last full</p> <p>21 paragraph on the bottom of page 2, "Remember,</p> <p>22 staff started this battle when you decided to</p> <p>23 become a marketing organization. The minute</p> <p>24 you went from trying to supply producers with</p> <p>25 a tool to beating them over the head with it</p>
<p style="text-align: right;">Page 155</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 industry even more."</p> <p>3 Was that your intent in</p> <p>4 speaking at the symposium?</p> <p>5 A. It was not.</p> <p>6 Q. And then turning to page 615,</p> <p>7 at the bottom, J.T. Dean responds to Chad</p> <p>8 Gregory now, and he says, "Nothing like</p> <p>9 kicking the hornets nest on Monday morning.</p> <p>10 "How did I get in the middle of</p> <p>11 this again?"</p> <p>12 Do you know J.T. Dean?</p> <p>13 A. I do.</p> <p>14 Q. And Chad responds to him,</p> <p>15 moving up the e-mail chain. And then on page</p> <p>16 2, there's another response from J.T., and he</p> <p>17 says three paragraphs down, "I find this</p> <p>18 whole thing distasteful, but keep reminding</p> <p>19 myself that many people warned staff, the</p> <p>20 welfare committee, the board, and the</p> <p>21 executive committee about what was coming</p> <p>22 when the 100% rule was implemented. I told</p> <p>23 you many years ago that a unique company like</p> <p>24 Sparboe that was into breaking and grading</p> <p>25 with 12 million chickens would not be able to</p>	<p style="text-align: right;">Page 157</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 is when you sold your soul."</p> <p>3 Do you agree with that?</p> <p>4 A. Earlier in my testimony I</p> <p>5 explained why I left UEP. This also</p> <p>6 encapsulates part of the reason why I decided</p> <p>7 to leave the organization that I had been</p> <p>8 working for for 15 years.</p> <p>9 Q. How so?</p> <p>10 A. Because I've always -- I've</p> <p>11 been in association management for close to</p> <p>12 40 years now, and it's always been an</p> <p>13 opportunity to provide services to an</p> <p>14 industry that asks for your services. This</p> <p>15 became an example of where things were being</p> <p>16 forced on people they didn't want. And this</p> <p>17 also gives credence to some of my statements</p> <p>18 earlier that the people within the industry</p> <p>19 came to me, after I left UEP and fully</p> <p>20 intended to leave the industry altogether,</p> <p>21 and they wanted something to respond with.</p> <p>22 And so that's why I developed the Process</p> <p>23 Verified Program.</p> <p>24 Q. Let me direct you now to page</p> <p>25 1, and this is Chad responding to J.T. Dean</p>

40 (Pages 154 - 157)

<p style="text-align: right;">Page 158</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 at the bottom where he says, "WOW!!! Not</p> <p>3 sure what to say. I thought we were</p> <p>4 friends..." et cetera.</p> <p>5 The next paragraph, point 1,</p> <p>6 Let me remind you, neither Gene nor I have</p> <p>7 ever gotten to vote on the committee or Board</p> <p>8 - NEVER! The owner, producers that make up</p> <p>9 those bodies are "big boys" and are equally</p> <p>10 successful entrepreneurs and business men as</p> <p>11 you and your father. THEY made these tough</p> <p>12 decisions - not Gene or I -- not Gene and I.</p> <p>13 We just happen to agree with them.</p> <p>14 What would you say to that?</p> <p>15 A. That I think you've seen by</p> <p>16 looking through some of these documents how</p> <p>17 they abuse verbally people, and that to make</p> <p>18 this claim that it's the big boys that are</p> <p>19 making the decisions without the staff having</p> <p>20 the input, I find it incredible that he can</p> <p>21 say that.</p> <p>22 Q. Well, then looking back up to</p> <p>23 J.T. Dean's response, the third paragraph</p> <p>24 down, J.T. Dean says, "Don't give me the line</p> <p>25 that you guys just follow the votes, I'm not</p>	<p style="text-align: right;">Page 160</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 for identification.)</p> <p>3 - - -</p> <p>4 BY MR. PIZZIRUSSO:</p> <p>5 Q. I'm now showing you what's been</p> <p>6 marked as Klippen Exhibit 30, MFI0005090, an</p> <p>7 e-mail dated, from Ken Klippen to several</p> <p>8 people, on October 11, 2007. Do you</p> <p>9 recognize this document?</p> <p>10 A. I do.</p> <p>11 Q. What is it?</p> <p>12 A. It's a document I sent to a</p> <p>13 couple of people that I was -- in fact, in</p> <p>14 this case, this was Michael Foods. Those</p> <p>15 people listed were all Michael Foods</p> <p>16 employees.</p> <p>17 Q. The subject says, "UEP's action</p> <p>18 may be legally actionable." What were you</p> <p>19 referring to?</p> <p>20 MS. ANDERSON: Objection. You</p> <p>21 misread the document.</p> <p>22 BY MR. PIZZIRUSSO:</p> <p>23 Q. "UEP's action may be legally</p> <p>24 actionable."</p> <p>25 MS. ANDERSON: You're reading</p>
<p style="text-align: right;">Page 159</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 that naive. Staff direction and back room</p> <p>3 lobbying are 70 percent of the battle. I</p> <p>4 still stand by my statement that the 100</p> <p>5 percent rule was a mistake from the start."</p> <p>6 Do you agree with his statement</p> <p>7 there?</p> <p>8 A. I do.</p> <p>9 I can't testify to the</p> <p>10 70 percent aspect, but I can say that it's a</p> <p>11 large percentage of decision-making.</p> <p>12 Q. Do you think UEP was truly a</p> <p>13 democratic one member/one vote organization?</p> <p>14 A. At one time, yes.</p> <p>15 Q. And then at some point it</p> <p>16 changed from that?</p> <p>17 A. It did.</p> <p>18 Q. When approximately do you think</p> <p>19 that was, right before you left, is that what</p> <p>20 you said earlier?</p> <p>21 A. Approximately -- I'd say within</p> <p>22 a year of my leaving UEP.</p> <p>23 - - -</p> <p>24 (Exhibit Klippen-30, 10/11/07</p> <p>25 E-mail, Bates MFI0005090, was marked</p>	<p style="text-align: right;">Page 161</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the subject line?</p> <p>3 MR. PIZZIRUSSO: Yes.</p> <p>4 BY MR. PIZZIRUSSO:</p> <p>5 Q. What were you referring to?</p> <p>6 A. The mere fact that they were</p> <p>7 trying to prevent us from developing a</p> <p>8 program and actually offer it. You can see</p> <p>9 how they were trying to object to my making a</p> <p>10 presentation in front of a group of leaders</p> <p>11 at a state university on the Process Verified</p> <p>12 Program. Throughout the whole process, it</p> <p>13 just appeared to me that they kept trying to</p> <p>14 stop development of another program that</p> <p>15 might compete with them. I'm not an</p> <p>16 attorney, but I believe that's referred to as</p> <p>17 tortious business interference. And so we</p> <p>18 just had this discussion. We did not follow</p> <p>19 through with any kind of action, but I wanted</p> <p>20 everybody to be aware that this was</p> <p>21 approaching a point of when do we decide to</p> <p>22 back away, or when do we decide to press</p> <p>23 forward on something that might be classified</p> <p>24 as legally actionable.</p> <p>25 Q. And the Iowa State University</p>

<p style="text-align: right;">Page 162</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 conference, that's the one we were just</p> <p>3 talking about --</p> <p>4 A. That's correct.</p> <p>5 Q. -- in the previous e-mail?</p> <p>6 A. That's correct.</p> <p>7 Q. And in the second paragraph of</p> <p>8 this document, you talk about when you had</p> <p>9 dinner with Gene. Is that the dinner we've</p> <p>10 been referring to --</p> <p>11 A. Yes, it is.</p> <p>12 Q. -- several times throughout</p> <p>13 this deposition?</p> <p>14 A. The one and only dinner.</p> <p>15 Q. The last sentence says, "I</p> <p>16 asked Gene to 'just leave us alone.'"</p> <p>17 Is that right?</p> <p>18 A. That's correct.</p> <p>19 Q. Did he leave you alone?</p> <p>20 A. No.</p> <p>21 Q. And then on the third paragraph</p> <p>22 you say, "Another UEP Board member talked</p> <p>23 with me this morning, saying he felt that UEP</p> <p>24 should get out of the 'animal welfare' side</p> <p>25 of the business and concentrate on their</p>	<p style="text-align: right;">Page 164</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'm now handing you what's been</p> <p>3 marked Klippen Exhibit 31, Bates MFI0064112.</p> <p>4 It appears to be an e-mail from you, dated</p> <p>5 October 26, 2007, to two people at Michael</p> <p>6 Foods. Do you recall this document?</p> <p>7 A. I do.</p> <p>8 Q. What is it?</p> <p>9 A. It's a memo that I sent, again,</p> <p>10 to Michael Foods, Terry Baker and Toby</p> <p>11 Catherman informing them that UEP was meeting</p> <p>12 with the Secretary of Agriculture trying to</p> <p>13 stop the progress that we were making on the</p> <p>14 verified -- the Process Verified Program. I</p> <p>15 provided some additional information to show</p> <p>16 that they were bent on trying to stop</p> <p>17 anything I did within the industry including</p> <p>18 speak at the Iowa State University. I</p> <p>19 acknowledged that they were fearful that we</p> <p>20 might actually develop a program that would</p> <p>21 compete with them. I was asking for a</p> <p>22 meeting -- to expedite a meeting with the</p> <p>23 administrator so we could deliver our side of</p> <p>24 the story.</p> <p>25 Q. Were you surprised at the level</p>
<p style="text-align: right;">Page 163</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 charter objectives."</p> <p>3 Do you remember who that was?</p> <p>4 A. I cannot recall who it was. I</p> <p>5 wouldn't have stated that unless it was true.</p> <p>6 Q. And then you say, "Although the</p> <p>7 UEP Certification program is a profit</p> <p>8 center..., in the next sentence, are you</p> <p>9 referring to -- what are you referring to</p> <p>10 there?</p> <p>11 A. Well, I think I have earlier</p> <p>12 testimony that suggested that -- that stated</p> <p>13 that they were collecting a fee to implement</p> <p>14 the UEP Certified Program, and actually that</p> <p>15 fee was greater than the actual dues that</p> <p>16 were being collected by the organization. So</p> <p>17 they had a dues they had to pay and then they</p> <p>18 had to pay an additional fee for their UEP</p> <p>19 Certified Program.</p> <p>20 - - -</p> <p>21 (Exhibit Klippen-31, 10/26/07</p> <p>22 E-mail, Bates MFI0064112, was marked</p> <p>23 for identification.)</p> <p>24 - - -</p> <p>25 BY MR. PIZZIRUSSO:</p>	<p style="text-align: right;">Page 165</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 of opposition you had received in trying to</p> <p>3 develop this program?</p> <p>4 MS. LEVINE: Objection to form</p> <p>5 of the question.</p> <p>6 THE WITNESS: Let me state it</p> <p>7 this way: I am surprised that they</p> <p>8 would -- that Gene and Chad would go</p> <p>9 to this length to try to stop</p> <p>10 something just simply because it was a</p> <p>11 competing program with theirs.</p> <p>12 BY MR. PIZZIRUSSO:</p> <p>13 Q. Do you think it may have had to</p> <p>14 do with anything beyond just the fact that it</p> <p>15 was a competing program?</p> <p>16 MS. LEVINE: Objection to the</p> <p>17 form of the question.</p> <p>18 THE WITNESS: Yes. Because the</p> <p>19 potential existed that people would</p> <p>20 get fed up and actually ask me to</p> <p>21 develop a new national trade</p> <p>22 association.</p> <p>23 - - -</p> <p>24 (Exhibit Klippen-32, E-mail</p> <p>25 chain, Bates UE0615963, was marked for</p>

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1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL  
 2 identification.)  
 3 - - -  
 4 BY MR. PIZZIRUSSO:  
 5 Q. I'm now handing you what's been  
 6 marked as Klippen-32, Bates UE0615963. Have  
 7 you seen this before?  
 8 A. I have not.  
 9 Q. And Mike McGriff, he's at UEP.  
 10 Correct?  
 11 A. Correct.  
 12 Q. He sends an e-mail to Gene and  
 13 Chad on November 5, 2007, subject "Iowa  
 14 Symposium (USDA Process Verified)."  
 15 "I'll give you some time to  
 16 think about it and call you later, but...is  
 17 there anything specific I should say at the  
 18 Iowa Symposium on Wednesday when...Klippen  
 19 concludes his talk on the USDA Process  
 20 Verified program? Would you like me to say  
 21 something along the lines of 'The majority of  
 22 UEP membership for which over 95% of the  
 23 industry is part of believes that this is not  
 24 a good program for the industry...'. Or  
 25 should I just play it by ear, depending on

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1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL  
 2 what he says?"  
 3 Then there is a response from  
 4 Gene to Mike, in the bold portion, "If  
 5 you...say anything, I think you should limit  
 6 it to this: UEP does not oppose any producer  
 7 from developing their own...program" --  
 8 sorry, "...their own animal welfare program.  
 9 The UEP Board, however, has taken a position  
 10 in opposition to the use of the PVP program  
 11 and the PVP shield as a marketing program or  
 12 statement regarding animal welfare unless the  
 13 producer is implementing a recognized  
 14 science-based program on 100% of their  
 15 flocks. UEP is concerned at this time with  
 16 the embarrassment this could cause upon the  
 17 industry and USDA once animal activist groups  
 18 learn that USDA is being used to market an  
 19 egg product when a company has not  
 20 implemented a science-based guidelines 100%  
 21 of their production."  
 22 Did Mike make these comments to  
 23 you?  
 24 MS. LEVINE: Just want to make  
 25 an objection for the record that the

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1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL  
 2 whole e-mail was not read.  
 3 BY MR. PIZZIRUSSO:  
 4 Q. Did Mike make these objections  
 5 to you at the conference?  
 6 A. I recall when I finished my  
 7 presentation he did stand up and did raise  
 8 some points, which I disputed. I do not  
 9 remember specifically what he said. I do not  
 10 remember him saying that UEP is concerned  
 11 that this is an embarrassment that can cause  
 12 industry and USDA anything of the nature that  
 13 he was implying here in his e-mail.  
 14 - - -  
 15 (Exhibit Klippen-33, E-mail  
 16 chain, Bates UE0615964 & UE0615965,  
 17 was marked for identification.)  
 18 - - -  
 19 BY MR. PIZZIRUSSO:  
 20 Q. I'm now handing you a copy of  
 21 what's been marked Klippen-33. And it  
 22 appears to be an e-mail chain between Mike,  
 23 Gene and Chad after the Iowa symposium where  
 24 he's telling them what happened. If you go  
 25 to the bottom, the second paragraph that

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1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL  
 2 says, "First off...", it says, "First off,  
 3 you and Chad...have copies of the Symposium  
 4 hand-out (PP presentations) which include Ken  
 5 Klippen's presentation on the USDA Process  
 6 Verified Program. Also, I was able to record  
 7 his talk via microcassette recorder, so you  
 8 can go through the PP section as you listen  
 9 to him."  
 10 Did you know that he was  
 11 recording you at this conference?  
 12 A. I did not.  
 13 Q. "The sound quality isn't great  
 14 but it is adequate enough to be understood.  
 15 Also taped are my comments to him at the end  
 16 and his subsequent response..."  
 17 What's your reaction to that?  
 18 A. Actually no reaction. He was  
 19 there, he listened to the -- and he had a  
 20 copy of the PowerPoint. As to taping it,  
 21 well, it was a public forum, I didn't have a  
 22 problem with that, so...  
 23 Q. And then in the fourth  
 24 paragraph, he talks about the conversation  
 25 that they will hear on the tape. It says,

<p style="text-align: right;">Page 170</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 "You will hear Ken in the presentation speak</p> <p>3 of a recent conversation he had with Wayne</p> <p>4 Pacelle/HSUS (during a conference each was</p> <p>5 attending). I believe Ken's comments in the</p> <p>6 presentation were that he shared details of</p> <p>7 the PVP program with Pacelle. During one of</p> <p>8 the breaks, I questioned Ken directly on</p> <p>9 this. During our conversation, I asked Ken</p> <p>10 what Pacelle's reaction was and Ken replied</p> <p>11 something along the lines of 'he said it</p> <p>12 sounded good.'"</p> <p>13 Is that your recollection of</p> <p>14 that conversation?</p> <p>15 A. I did remember having a</p> <p>16 conversation with Wayne Pacelle. I do not</p> <p>17 remember discussing this with Mike McGriff.</p> <p>18 I did respond -- if I did, it would be that I</p> <p>19 did present it to HSUS and they wanted to see</p> <p>20 it for further evaluation.</p> <p>21 Q. And then he says in the next</p> <p>22 paragraph, "Also, interestingly, Ken briefly</p> <p>23 commented to the group (in response to my</p> <p>24 comments) that he left UEP because of what I</p> <p>25 believe he referred to as 'philosophical'</p>	<p style="text-align: right;">Page 172</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And did you give any</p> <p>3 information critical of UEP to the Humane</p> <p>4 Society?</p> <p>5 A. I did not.</p> <p>6 Q. And did Gene know that you had</p> <p>7 philosophical differences -- I'm sorry,</p> <p>8 scratch that.</p> <p>9 Did you discuss with Gene your</p> <p>10 philosophical differences with him when you</p> <p>11 left?</p> <p>12 A. Earlier in my testimony I</p> <p>13 stated that I was opposed to the 100 percent</p> <p>14 rule, and I discussed that with Gene</p> <p>15 directly. That was philosophically we were</p> <p>16 different. I also suggested he disband the</p> <p>17 Scientific Advisory Committee because</p> <p>18 continued operation would be continued</p> <p>19 changes and adjustments that would have a</p> <p>20 negative impact on the industry. But that</p> <p>21 was the extent. I never used the word</p> <p>22 philosophical with Gene.</p> <p>23 MR. PIZZIRUSSO: I think they</p> <p>24 need to change the tape so maybe we'll</p> <p>25 take another quick break.</p>
<p style="text-align: right;">Page 171</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 differences or something similar."</p> <p>3 We've talked about that. Are</p> <p>4 those the same philosophical differences you</p> <p>5 mentioned earlier?</p> <p>6 A. Yes. Yeah.</p> <p>7 Q. And then if you move to the top</p> <p>8 of this e-mail, Gene responds, "This confirms</p> <p>9 what I suspected some time ago. I had</p> <p>10 suspected that Klippen may have been giving</p> <p>11 information to HSUS. Sorry, that I did not</p> <p>12 know what his true reason was for leaving -</p> <p>13 'philosophical differences,' what are they."</p> <p>14 First of all, we talked about</p> <p>15 earlier giving information to the Humane</p> <p>16 Society about this lawsuit. Did you give any</p> <p>17 information to them about the Process</p> <p>18 Verified Program beyond what you talked about</p> <p>19 earlier just a second ago?</p> <p>20 MS. ANDERSON: Objection. Vague</p> <p>21 and ambiguous.</p> <p>22 THE WITNESS: Just information</p> <p>23 about the Process Verified Program. I</p> <p>24 did not talk about any lawsuit.</p> <p>25 BY MR. PIZZIRUSSO:</p>	<p style="text-align: right;">Page 173</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 VIDEOGRAPHER: Going off the</p> <p>3 record. 2:09 p.m. This is the end of</p> <p>4 tape number three.</p> <p>5 - - -</p> <p>6 (A recess was taken.)</p> <p>7 - - -</p> <p>8 VIDEOGRAPHER: On the record.</p> <p>9 2:20. This is the beginning of tape</p> <p>10 number four.</p> <p>11 - - -</p> <p>12 (Exhibit Klippen-34, E-mail</p> <p>13 chain, Bates MOARK0005719 -</p> <p>14 MOARK0005722, was marked for</p> <p>15 identification.)</p> <p>16 - - -</p> <p>17 BY MR. PIZZIRUSSO:</p> <p>18 Q. I've given you a copy of what's</p> <p>19 been marked as Klippen Exhibit 35. It's</p> <p>20 MOARK 005719 to 22. Starting again on the</p> <p>21 last page.</p> <p>22 MS. ANDERSON: Jamie, is this</p> <p>23 34?</p> <p>24 MR. PIZZIRUSSO: 34. Sorry.</p> <p>25 BY MR. PIZZIRUSSO:</p>

44 (Pages 170 - 173)



<p style="text-align: right;">Page 174</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Starting again at the last</p> <p>3 page, 5722, it appears to be an e-mail from</p> <p>4 Craig Willardson to Gene Gregory. Gene--we</p> <p>5 had a request to license the Land O'Lakes</p> <p>6 retail liquid egg product using the VPC</p> <p>7 program versus the UEP certified, which LOL</p> <p>8 has always insisted. What is the status</p> <p>9 lately of VPC?</p> <p>10 Were you aware that Land</p> <p>11 O'Lakes was considering having its producers</p> <p>12 go through the VPC program?</p> <p>13 A. I was not.</p> <p>14 Q. So Gene responds to Craig</p> <p>15 Willardson, if you go to 5721, "I think you</p> <p>16 mean the USDA PVP (Process Verified Program).</p> <p>17 To our knowledge USDA has yet to approve</p> <p>18 any egg producer/marketer for using this to</p> <p>19 make an marketing statement about animal</p> <p>20 welfare. I spoke Rex Barnes at USDA a couple</p> <p>21 weeks ago and learned at that time that USDA</p> <p>22 still had not approved any producer."</p> <p>23 Is it right that there were no</p> <p>24 producers that had been approved at this</p> <p>25 time?</p>	<p style="text-align: right;">Page 176</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 they learn what this program is all about."</p> <p>3 Are you aware of any animal</p> <p>4 activists having concerns with the PVP</p> <p>5 program?</p> <p>6 A. Not at all. In fact, earlier I</p> <p>7 mentioned that I presented the PVP, the</p> <p>8 program details to HSUS so that they could</p> <p>9 see that we were in the process of developing</p> <p>10 another animal welfare program. But there</p> <p>11 was never any mention of any concern.</p> <p>12 Q. And then Craig responds to</p> <p>13 Gene, again, on 5721, "Gene--I am indeed</p> <p>14 referring to 'VPC' or Verified Process</p> <p>15 Control --Klippen's alternative program." He</p> <p>16 says he's not comfortable sharing the firm's</p> <p>17 name yet who had made the request because</p> <p>18 Gene had asked for that. And then Gene asks</p> <p>19 Craig to call him. Craig says he can't. So</p> <p>20 then Gene sends another sort of lengthy</p> <p>21 description of the two programs on 5719 on</p> <p>22 over into 5720. This is lengthy, but the</p> <p>23 bullet points that Gene makes, we'll go</p> <p>24 through them, The VPC program does not</p> <p>25 require the...farmer to implement science</p>
<p style="text-align: right;">Page 175</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Object to the form</p> <p>3 of the question.</p> <p>4 THE WITNESS: As I stated</p> <p>5 earlier, it took a year for me to</p> <p>6 write it. There were companies that</p> <p>7 were -- eight companies that were</p> <p>8 sponsoring my efforts at trying to</p> <p>9 write it, so they paid me. There was</p> <p>10 a time period that there was no</p> <p>11 approved PVP verified customers or</p> <p>12 verified companies on that program.</p> <p>13 It eventually did. And eventually</p> <p>14 USDA did publish the company that did</p> <p>15 get PVP certified.</p> <p>16 BY MR. PIZZIRUSSO:</p> <p>17 Q. And then you continue, "It</p> <p>18 remains our opinion that this is not a good</p> <p>19 program for the egg industry because those</p> <p>20 that were trying to set up a competitive</p> <p>21 program using the PVP did not require a</p> <p>22 company to fully implement science-based</p> <p>23 guidelines on 100% of their production</p> <p>24 flocks. We also think this PVP logo will</p> <p>25 draw attention from the animal activists once</p>	<p style="text-align: right;">Page 177</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 based animal welfare guidelines on 100</p> <p>3 percent of their production flocks.</p> <p>4 Therefore, an egg farmer using the VPC</p> <p>5 program could be providing as little as 48</p> <p>6 square inches per bird for most of their</p> <p>7 flocks while only providing the</p> <p>8 science-recommended space on a few of their</p> <p>9 birds to meet -- to simply meet a customer</p> <p>10 needs. The UEP program currently requires</p> <p>11 64 square inches and will soon require 67</p> <p>12 square inches for White Leghorns and</p> <p>13 76 square inches for Brown egg layers.</p> <p>14 Do you think that's a fair</p> <p>15 characterization of the difference between</p> <p>16 the two programs?</p> <p>17 A. It is fair from Gene's</p> <p>18 perspective. When I say that, he is trying</p> <p>19 to denigrate the program by the way he</p> <p>20 characterizes it. It is animal -- it is a</p> <p>21 science-based set of guidelines. It is true</p> <p>22 that it's less than 100 percent of all the</p> <p>23 flocks can still be on the program as long as</p> <p>24 they have the documentation to support that.</p> <p>25 And it is -- our program was at 67 square</p>

45 (Pages 174 - 177)



<p style="text-align: right;">Page 178</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 inches for white leghorns, so that's correct.</p> <p>3 Q. Then he -- his next bullet,</p> <p>4 "The VPC program is a somewhat secret program</p> <p>5 with full details not available to the</p> <p>6 industry or the public. The UEP Certified</p> <p>7 program is posted on the www.uepcertified.com</p> <p>8 website so that everyone can find full</p> <p>9 details."</p> <p>10 Do you think that's a fair</p> <p>11 characterization?</p> <p>12 A. It's true. I was in the</p> <p>13 process of writing the program. We were --</p> <p>14 it wasn't fully implemented until later, so</p> <p>15 why put up partial details. Eventually it</p> <p>16 was on. In fact, UEP actually initiated a</p> <p>17 FOIA, a Freedom of Information Request Act,</p> <p>18 through the government to get access to what</p> <p>19 I had developed and they got the full</p> <p>20 details.</p> <p>21 Q. In fact, didn't they initiate</p> <p>22 two FOIAs? Are you aware of --</p> <p>23 A. I have two FOIAs. One I was</p> <p>24 aware of was from UEP.</p> <p>25 Q. The next bullet says, "While</p>	<p style="text-align: right;">Page 180</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 an audit of the humane standards for 100% of</p> <p>3 the company's production rather than just a</p> <p>4 few chickens."</p> <p>5 Is that a fair characterization?</p> <p>6 A. It is not.</p> <p>7 Just for information purposes,</p> <p>8 the HACCP is Hazard Analysis Critical Control</p> <p>9 Points which is an accepted practice of</p> <p>10 verifying compliance with a set of</p> <p>11 guidelines. The government uses HACCP in its</p> <p>12 inspection process of meat birds now. It's</p> <p>13 just the way he characterized it as just a</p> <p>14 few birds. Farms can put an entire complex</p> <p>15 on a PVP or they can put one barn on a PVP.</p> <p>16 They could not commingle the eggs, so,</p> <p>17 therefore, we had the documentation to verify</p> <p>18 that those eggs were not commingled. Just</p> <p>19 the way he characterizes it, it makes it look</p> <p>20 like a way to slip something by the consumer</p> <p>21 which it was just the opposite.</p> <p>22 Q. The next bullet, "The UEP</p> <p>23 Certified program is a science-based program</p> <p>24 for the welfare of chickens - not just a</p> <p>25 marketing program."</p>
<p style="text-align: right;">Page 179</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the VPC program details are not open to</p> <p>3 public view, we suspect the VPC program will</p> <p>4 allow egg producers to backfill cages and to</p> <p>5 use feed withdrawal molts - both of which are</p> <p>6 prohibited by the UEP Certified program."</p> <p>7 Is that a fair characterization?</p> <p>8 A. It's incorrect. While we did</p> <p>9 allow backfilling of cages, because there's</p> <p>10 no science to support not or prohibiting</p> <p>11 that, we did not use a -- we did not withdraw</p> <p>12 feed during a molting period.</p> <p>13 Q. The next bullet, "We do not</p> <p>14 believe the VPC program has been endorsed by</p> <p>15 either the Food Marketing Institute...or the</p> <p>16 National Council of Chain Restaurants..."</p> <p>17 Was that true?</p> <p>18 A. That's true. We didn't present</p> <p>19 it to them.</p> <p>20 Q. And then he says, "The VPC</p> <p>21 program really is a program whereby the audit</p> <p>22 focuses more upon a HACCP type approach where</p> <p>23 the USDA auditor is verifying the program</p> <p>24 rather than what actually happens in the</p> <p>25 chicken house. The UEP Certified program is</p>	<p style="text-align: right;">Page 181</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Is that a fair characterization?</p> <p>3 A. Our program was also a</p> <p>4 science-based program. Farmers have always,</p> <p>5 in the process of the last four decades, have</p> <p>6 tried to do what is in the best interest of</p> <p>7 their chickens. The way it looks like Gene</p> <p>8 is saying that what we've been doing all that</p> <p>9 time is been abusing those chickens. That is</p> <p>10 a falsehood. I presented science numerous</p> <p>11 times showing that the way we're doing it,</p> <p>12 we're going to get more eggs, more large</p> <p>13 eggs, less mortality because we are -- we</p> <p>14 have evolved to a point where we're actually</p> <p>15 caring for those birds. To call it a</p> <p>16 marketing program is insulting.</p> <p>17 Q. The next bullet is, "Who are</p> <p>18 the scientist that wrote the VPC program?</p> <p>19 They are not acknowledged in this Executive</p> <p>20 Summary. The UEP Certified program has the</p> <p>21 very best recognized animal welfare</p> <p>22 scientists in the world and their names are</p> <p>23 included in the program which again is posted</p> <p>24 on the website."</p> <p>25 Is that a fair characterization?</p>

<p style="text-align: right;">Page 182</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I didn't post the names of the</p> <p>3 scientists that we used because you can see</p> <p>4 the harassment that they would have received.</p> <p>5 You're detailing years of my life where I was</p> <p>6 harassed. Some of it I wasn't even aware of</p> <p>7 until today. That they were bent on stopping</p> <p>8 the program. I knew of the harassment at</p> <p>9 HSU -- excuse me, at USDA because USDA was</p> <p>10 informing me about the meetings, the numerous</p> <p>11 meetings that they were holding with Gene.</p> <p>12 But you can see that if I were to post</p> <p>13 information or post the names of individuals,</p> <p>14 they would have been harassed. So I was</p> <p>15 protecting my scientists. But my scientists</p> <p>16 that I used were from land-grant universities</p> <p>17 around the country. USDA did confirm that</p> <p>18 they were on the committee. They did confirm</p> <p>19 that they accepted the Process Verified</p> <p>20 Program, that it was scientifically</p> <p>21 acceptable. In fact, the scientists I used</p> <p>22 are the kind of scientists that actually have</p> <p>23 experience in poultry production, not in</p> <p>24 ethical perceptions as some of these</p> <p>25 scientists do.</p>	<p style="text-align: right;">Page 184</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 full details but do know that his program</p> <p>3 does not require an egg farmer to implement</p> <p>4 science-based guidelines on 100% of their</p> <p>5 production flocks. He is also working with</p> <p>6 USDA to use the USDA Process Verified shield</p> <p>7 as a marketing statement for animal welfare.</p> <p>8 UEP has expressed concern for any logo or</p> <p>9 label that makes an animal welfare statement</p> <p>10 when the company is only humane to some of</p> <p>11 their birds."</p> <p>12 You may recall -- well, let me</p> <p>13 stop there.</p> <p>14 Do you think that's a fair</p> <p>15 characterization?</p> <p>16 A. No.</p> <p>17 Q. Do you think that Ken was</p> <p>18 disparaging your program?</p> <p>19 A. That who was disparaging my --</p> <p>20 Q. I'm sorry, that Gene. Let me</p> <p>21 start that again.</p> <p>22 Do you think that Gene Gregory</p> <p>23 was disparaging your Process Verified</p> <p>24 Program?</p> <p>25 A. I do. Tim Hammonds was the</p>
<p style="text-align: right;">Page 183</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (Exhibit Klippen-35, 12/12/07</p> <p>4 Letter, Bates UE0666730 &amp; UE0666731,</p> <p>5 was marked for identification.)</p> <p>6 - - -</p> <p>7 BY MR. PIZZIRUSSO:</p> <p>8 Q. I'm handing you what has been</p> <p>9 marked as Exhibit 35, Bates UE0666730 to 31.</p> <p>10 It appears to be a letter drafted to Tim</p> <p>11 Hammonds of the Food Marketing Institute on</p> <p>12 December 12, 2007. Turning to the second</p> <p>13 page with the headline "Competitive Animal</p> <p>14 Welfare Program."</p> <p>15 Well, first of all, did you</p> <p>16 know that this letter was sent to FMI?</p> <p>17 A. I did not.</p> <p>18 Q. And the second page Competitive</p> <p>19 Animal Welfare Program, "Former UEP employee,</p> <p>20 Ken Klippen is attempting to market a program</p> <p>21 in competition with the UEP Certified</p> <p>22 program. His program - Verified Process</p> <p>23 Control, LLC - is kept in secret and only</p> <p>24 available by signing a confidential</p> <p>25 agreement. Therefore, we do not know the</p>	<p style="text-align: right;">Page 185</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 chairman of the Food Marketing Institute. I</p> <p>3 knew Tim. I interviewed him for a</p> <p>4 documentary that we submitted. And he is</p> <p>5 vilifying the program that I'm trying to put</p> <p>6 together.</p> <p>7 Q. He says, "You may recall that</p> <p>8 both FMI and UEP wanted an animal welfare</p> <p>9 program that was equal and fair to all</p> <p>10 members. That was the major reason UEP</p> <p>11 adopted the 100% rule."</p> <p>12 Do you agree that the major</p> <p>13 reason that UEP adopted the 100 percent rule</p> <p>14 was because of FMI?</p> <p>15 A. FMI and the National Council of</p> <p>16 Chain Restaurants requested, not just the egg</p> <p>17 industry, but all the animal industries to</p> <p>18 come up with some sort of a program that they</p> <p>19 could offer to their members. So I couldn't</p> <p>20 classify that as the major reason UEP adopted</p> <p>21 the 100 percent rule. I do think that that</p> <p>22 kind of evolved over time where they wanted</p> <p>23 to have 100 percent because they could see</p> <p>24 how that would be much more controlling. But</p> <p>25 he's actually appealing to Mr. Hammonds to</p>

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<p style="text-align: right;">Page 186</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 support what he's trying to get at the way</p> <p>3 he's drafted -- crafted this letter.</p> <p>4 Q. Well, if you look at, skipping</p> <p>5 to the next paragraph, "We would hope that if</p> <p>6 Klippen ever contacts FMI seeking your</p> <p>7 support or endorsement that you decline based</p> <p>8 upon the grounds that the program does not</p> <p>9 require a commitment of 100% of the flocks to</p> <p>10 meet science-based guidelines."</p> <p>11 I think you said earlier you</p> <p>12 hadn't ever sought FMI to endorse your</p> <p>13 program. Is that correct?</p> <p>14 A. For the Process Verified</p> <p>15 Control, I did not, no. I went to individual</p> <p>16 companies that were requiring an animal</p> <p>17 welfare program.</p> <p>18 I'm going to back up on one</p> <p>19 point, if I could. The first paragraph under</p> <p>20 "Competitive Animal Welfare Program" where he</p> <p>21 talks about the company is only humane to</p> <p>22 some birds, he is, again, mischaracterizing</p> <p>23 what took 40 years of the industry to come to</p> <p>24 a conclusion that this was the most humane</p> <p>25 way to raise chickens. We have the</p>	<p style="text-align: right;">Page 188</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 attorneys at Brann &amp; Isaacson, not Irving</p> <p>3 Isaacson who I had dealt with for many, many</p> <p>4 years. You can see he's at the top of the</p> <p>5 list of attorneys on this list, but an</p> <p>6 attorney that came later that was, again,</p> <p>7 attempting to discredit the efforts of the</p> <p>8 Process Verified Program. And I did respond</p> <p>9 to this letter.</p> <p>10 Q. On the second page of this</p> <p>11 letter, he says, the first full paragraph,</p> <p>12 "Beyond these concerns about the impact</p> <p>13 generally on the industry, UEP is concerned</p> <p>14 that your marketing overtures to individuals</p> <p>15 are seriously misleading. For example, we</p> <p>16 are unaware of any broad scientific effort to</p> <p>17 establish animal welfare guidelines for caged</p> <p>18 layers other than the effort undertaken by</p> <p>19 UEP's scientific advisory committee. It is</p> <p>20 likely that any such scientific effort would</p> <p>21 have come to UEP's attention since UEP is in</p> <p>22 constant contact with virtually every</p> <p>23 significant poultry science expert who has</p> <p>24 done work in the animal welfare field.</p> <p>25 Accordingly, UEP was surprised to read of the</p>
<p style="text-align: right;">Page 187</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 documentation from the scientists to support</p> <p>3 that. It's as if his program was the only</p> <p>4 humane program out there. Again, it's a way</p> <p>5 to vilify what I was trying to put together.</p> <p>6 Q. Hammonds was not vilifying your</p> <p>7 program that you're aware of, though,</p> <p>8 correct?</p> <p>9 A. Never.</p> <p>10 Q. You're referring to Gene</p> <p>11 Gregory when you said he was doing this. Is</p> <p>12 that --</p> <p>13 A. Gene Gregory, yes. Correct.</p> <p>14 - - -</p> <p>15 (Exhibit Klippen-36, 12/20/07</p> <p>16 Letter, Bates UE0140621 - UE0140623,</p> <p>17 was marked for identification.)</p> <p>18 - - -</p> <p>19 BY MR. PIZZIRUSSO:</p> <p>20 Q. I've handed you what has been</p> <p>21 marked as Klippen-36, UE0140621 to 623. Do</p> <p>22 you recognize this document?</p> <p>23 A. I do.</p> <p>24 Q. And what is it?</p> <p>25 A. It's a letter from one of the</p>	<p style="text-align: right;">Page 189</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 scientific work allegedly being done on</p> <p>3 behalf of your program."</p> <p>4 What's your reaction to that?</p> <p>5 A. I think this demonstrates</p> <p>6 arrogance. I think that UEP was using their</p> <p>7 law firm to try to intimidate me by saying</p> <p>8 that there isn't any other scientists out</p> <p>9 there except for our scientists or the ones</p> <p>10 we're aware of, which is not true. The</p> <p>11 scientists I have used, I have quoted</p> <p>12 extensively in some of the articles I've</p> <p>13 written of late to some of the newspapers.</p> <p>14 So just because UEP is not aware of the</p> <p>15 scientists that -- they are -- they know who</p> <p>16 they are, I just didn't want to divulge their</p> <p>17 names to them for this kind of abuse that</p> <p>18 they would have received.</p> <p>19 - - -</p> <p>20 (Exhibit Klippen-37, E-mail</p> <p>21 chain, Bates NL01185714 - NL01185717,</p> <p>22 was marked for identification.)</p> <p>23 - - -</p> <p>24 BY MR. PIZZIRUSSO:</p> <p>25 Q. I've handed you what's been</p>

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<p style="text-align: right;">Page 190</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 marked as Klippen-37, Bates NL01185714 to 17.</p> <p>3 Do you recognize this?</p> <p>4 A. I do.</p> <p>5 Q. Did you write this e-mail and</p> <p>6 receive this response from Gerry Wigren?</p> <p>7 A. I have. I did.</p> <p>8 Q. And is this the response to --</p> <p>9 does this include the response to the letter</p> <p>10 that we just read from Kevin Haley?</p> <p>11 A. It does.</p> <p>12 Q. In your response in particular,</p> <p>13 I want to direct you to the last paragraph</p> <p>14 where you say, "Lastly, please be informed</p> <p>15 that Klippen &amp; Associates LLC has consulted</p> <p>16 with a law firm in Minneapolis that</p> <p>17 specializes in business tort claims and</p> <p>18 anti-trust matters. On staff, Klippen &amp;</p> <p>19 Associates, LLC has an attorney with nearly</p> <p>20 twenty years experience in litigation. The</p> <p>21 characterization of the VPC for the egg</p> <p>22 industry appears to us to be singular in</p> <p>23 purpose; to stop a competing program. We</p> <p>24 look forward to your assurances that this is</p> <p>25 not the case."</p>	<p style="text-align: right;">Page 192</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Over and over again, in all</p> <p>3 these documents that you presented to me</p> <p>4 today, I've seen where information was given</p> <p>5 either to position or to vilify the Verified</p> <p>6 Process Control efforts, the Process Verified</p> <p>7 Program. And in this case I was giving them</p> <p>8 the opportunity to see why we did it and how</p> <p>9 we went about doing it so that they would</p> <p>10 have a more accurate picture from what they</p> <p>11 had been told. I think it's important for</p> <p>12 people to recognize that I was presenting a</p> <p>13 program that was a comparable program that</p> <p>14 did have the science-based backing. I</p> <p>15 provided 42 scientific references to support</p> <p>16 it and yet -- I was aware of some of this</p> <p>17 information, I'm absolutely astounded by the</p> <p>18 quantity and efforts by both Gene and Chad to</p> <p>19 try to stop it.</p> <p>20 - - -</p> <p>21 (Exhibit Klippen-38, E-mail</p> <p>22 chain, Bates SF111575 - SF111577, was</p> <p>23 marked for identification.)</p> <p>24 - - -</p> <p>25 BY MR. PIZZIRUSSO:</p>
<p style="text-align: right;">Page 191</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Did you ever get those</p> <p>3 assurances?</p> <p>4 A. No.</p> <p>5 Q. But you've never -- you never</p> <p>6 filed any litigation about it?</p> <p>7 A. No. But I was -- it was</p> <p>8 becoming -- I was becoming aware that the</p> <p>9 letter from the Brann &amp; Isaacson attorneys</p> <p>10 was just another one of those letters from</p> <p>11 within the industry that was trying to stop a</p> <p>12 competing program.</p> <p>13 Can I draw your attention,</p> <p>14 please, I want you to read or I will the very</p> <p>15 first paragraph. I said, "Thank you for your</p> <p>16 letter sent by UPS Express. It arrived on</p> <p>17 Saturday, December 22nd. I have known Brann &amp;</p> <p>18 Isaacson for more than twenty-five years, and</p> <p>19 always valued the opinion and counsel offered</p> <p>20 by Irving Isaacson and others at the firm</p> <p>21 over the many years of our association.</p> <p>22 However, the conclusions in your letter</p> <p>23 appear to be based on limited information,</p> <p>24 thus, I am pleased to have the opportunity of</p> <p>25 responding."</p>	<p style="text-align: right;">Page 193</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'm handing you what's been</p> <p>3 marked as Klippen-38, Bates SF111575 through</p> <p>4 577. Do you recognize this e-mail chain?</p> <p>5 A. I don't recall this. I know</p> <p>6 all the players that are mentioned here, but</p> <p>7 I have to read this to recollect what</p> <p>8 actually took place.</p> <p>9 Q. Okay.</p> <p>10 A. [Reviewing document.]</p> <p>11 I draw your attention to page</p> <p>12 2, SF111576, where I wrote to Alan Andrews.</p> <p>13 It says, "Dear Alan, UEP must be truly</p> <p>14 desperate as now Gene has scheduled a meeting</p> <p>15 next Wednesday with the scientists that</p> <p>16 helped created the production guidelines for</p> <p>17 the Verified program."</p> <p>18 That was my concern.</p> <p>19 Q. That's what I was wanted to ask</p> <p>20 you about. So Gene then actually contacted</p> <p>21 the scientists that you work with and tried</p> <p>22 to set up a meeting. Is that right?</p> <p>23 A. That's correct.</p> <p>24 MS. LEVINE: Object to the form</p> <p>25 of the question. Misleading. Lacks</p>

<p style="text-align: right;">Page 194</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 foundation. The witness can testify.</p> <p>3 BY MR. PIZZIRUSSO:</p> <p>4 Q. Do you know if the witness --</p> <p>5 I'm sorry.</p> <p>6 Do you know if the scientists</p> <p>7 ended up actually meeting with him?</p> <p>8 A. I do not recall if they met</p> <p>9 with him. If they did, I think it might have</p> <p>10 been just phone conversations as opposed to</p> <p>11 an actual meeting.</p> <p>12 Q. Did you attend that meeting?</p> <p>13 A. I did not.</p> <p>14 Also on page 2, it mentions the</p> <p>15 Freedom of Information Act request.</p> <p>16 MS. LEVINE: I'm going to object</p> <p>17 to the reference of counsel to a</p> <p>18 meeting. The witness did not testify</p> <p>19 that there was a meeting, and he</p> <p>20 guessed that there was a phone call.</p> <p>21 - - -</p> <p>22 (Exhibit Klippen-39, 1/31/08</p> <p>23 Letter, Bates UE0575401 &amp; UE0575402,</p> <p>24 was marked for identification.)</p> <p>25 - - -</p>	<p style="text-align: right;">Page 196</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Where PVP covers less than 100</p> <p>3 percent of a company's production, we</p> <p>4 suggested that USDA require a factual and</p> <p>5 non-judgmental disclaimer to accompany the</p> <p>6 USDA seal whether on egg cartons or other</p> <p>7 packaging for the retail consumer or on any</p> <p>8 packaging promotional literature, Web sites</p> <p>9 or other places where the seal is displayed</p> <p>10 to the food industry. The disclaimer will</p> <p>11 read the producer of these eggs may not treat</p> <p>12 all of its flocks with the same standard of</p> <p>13 care that is applied to hens that laid these</p> <p>14 eggs.</p> <p>15 Did the USDA ever require that</p> <p>16 disclaimer?</p> <p>17 A. No.</p> <p>18 Q. What do you think about that</p> <p>19 suggestion?</p> <p>20 A. I think it's an abomination,</p> <p>21 because what it's -- basically what they're</p> <p>22 trying to say is unless you are under that</p> <p>23 set of guidelines, you're abusing your</p> <p>24 chickens. And as I stated twice previously,</p> <p>25 you know, the four decades of learning how to</p>
<p style="text-align: right;">Page 195</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. PIZZIRUSSO:</p> <p>3 Q. I'm handing you what's been</p> <p>4 marked Klippen-39, UE0575401 to 402. It</p> <p>5 appears to be a letter dated January 31,</p> <p>6 2008, to Lloyd Day from Mike McLeod and Randy</p> <p>7 Green. Were you aware of this letter?</p> <p>8 A. I was not.</p> <p>9 Q. It appears the first line,</p> <p>10 "Thank you for meeting with us recently for a</p> <p>11 further discussion of USDA's Process Verified</p> <p>12 Program..." Referring to the page -- to the</p> <p>13 second -- referring you to the second page,</p> <p>14 the second paragraph, "For that reason, we</p> <p>15 would like to suggest an approach that would</p> <p>16 preserve the seal's integrity in light of</p> <p>17 your determination not to impose a 100%</p> <p>18 requirement."</p> <p>19 So the USDA agreed with you</p> <p>20 that you would not have to have 100 percent</p> <p>21 requirement for the Process Verified Program?</p> <p>22 A. That's correct.</p> <p>23 MS. LEVINE: Object to the form</p> <p>24 of the question. Leading.</p> <p>25 BY MR. PIZZIRUSSO:</p>	<p style="text-align: right;">Page 197</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 produce chickens so they produce eggs, we</p> <p>3 have done it humanely. These were other</p> <p>4 programs that we could offer to our</p> <p>5 customers. That kind of a disclaimer on a</p> <p>6 carton would be like somebody saying don't</p> <p>7 buy these eggs.</p> <p>8 - - -</p> <p>9 (Exhibit Klippen-40, E-mail</p> <p>10 chain, Bates UE0897271, was marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MR. PIZZIRUSSO:</p> <p>14 Q. I'm handing you what's been</p> <p>15 marked as Klippen-40, UE0897271. So sounds</p> <p>16 like in April 2008 you had a ruptured</p> <p>17 appendix?</p> <p>18 A. I did.</p> <p>19 Q. Did you ever see this response</p> <p>20 from Howard Magwire?</p> <p>21 A. No.</p> <p>22 Q. And he says, "11 countries, 4</p> <p>23 continents!!!! I would be happy if just you</p> <p>24 and Bill send me cards. Did I every tell you</p> <p>25 about the time I almost died..."</p>

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<p style="text-align: right;">Page 198</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Do you know who is Howard</p> <p>3 Magwire?</p> <p>4 A. He was UEP's vice president of</p> <p>5 government relations. He replaced me when I</p> <p>6 left. I trained him.</p> <p>7 Q. I'm not going to ask you your</p> <p>8 reaction to that.</p> <p>9 A. You can guess what it is.</p> <p>10 - - -</p> <p>11 (Exhibit Klippen-41, 4/17/08</p> <p>12 E-mail, Bates MFI0064099, was marked</p> <p>13 for identification.)</p> <p>14 - - -</p> <p>15 BY MR. PIZZIRUSSO:</p> <p>16 Q. I'm giving you what's been</p> <p>17 marked Klippen-41, MFI0064099, an e-mail from</p> <p>18 you dated April 17, 2008. Do you recognize</p> <p>19 this document?</p> <p>20 A. I do.</p> <p>21 Q. And what is it?</p> <p>22 A. Again, it was informing Michael</p> <p>23 Foods that a FOIA had been filed against me.</p> <p>24 And I was showing how it was necessary to</p> <p>25 object to certain provisions, to redact</p>	<p style="text-align: right;">Page 200</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. It appears to be, yes.</p> <p>3 Q. And why did you object to this</p> <p>4 FOIA?</p> <p>5 A. There were certain details</p> <p>6 within the document that, as I mentioned,</p> <p>7 that took extensive time to produce. And</p> <p>8 since the Process Verified Program was a very</p> <p>9 unique program with much documentation, it</p> <p>10 would give a blueprint for anybody to simply</p> <p>11 copy it and develop another program. That</p> <p>12 would be another Process Verified Program</p> <p>13 that they could implement.</p> <p>14 Q. On page 4 of this document, if</p> <p>15 I could direct your attention to point 2</p> <p>16 under B, "Existence of Competition," it looks</p> <p>17 like you wrote, If USDA were to release this</p> <p>18 information provided by VPC no egg producer</p> <p>19 would seek USDA PVP status for fear of</p> <p>20 disclosure of its proprietary production</p> <p>21 practices. The sole purpose of VPC and the</p> <p>22 creation of its alternative animal welfare</p> <p>23 program would be obliterated. Granting UEP's</p> <p>24 FOIA request would effectively eliminate VPC</p> <p>25 as a competitive animal welfare program</p>
<p style="text-align: right;">Page 199</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 certain provisions of the documents simply</p> <p>3 because of the expense and time that went</p> <p>4 into preparing that and we weren't prepared</p> <p>5 to give it away at this point.</p> <p>6 Q. And they sent you this FOIA</p> <p>7 while they were recovering from your ruptured</p> <p>8 appendix?</p> <p>9 A. Correct.</p> <p>10 - - -</p> <p>11 (Exhibit Klippen-42, 4/17/08</p> <p>12 Letter, Bates MFI0064600 - MFI0064606,</p> <p>13 was marked for identification.)</p> <p>14 - - -</p> <p>15 BY MR. PIZZIRUSSO:</p> <p>16 Q. I've now handed you what's been</p> <p>17 marked Klippen-42, Bates MFI0064600 to 06,</p> <p>18 dated April 17, 2008. Do you recognize this</p> <p>19 document?</p> <p>20 A. I do.</p> <p>21 Q. And what is it?</p> <p>22 A. My response to the USDA Freedom</p> <p>23 of Information officer on the FOIA request.</p> <p>24 Q. Is it a true and accurate copy</p> <p>25 of that response?</p>	<p style="text-align: right;">Page 201</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 granting UEP a virtual monopoly in the United</p> <p>3 States egg industry.</p> <p>4 What did you mean by that?</p> <p>5 A. Again, there was some</p> <p>6 proprietary information that was developed in</p> <p>7 the process of developing a Process Verified</p> <p>8 Program. And as you've seen by the extensive</p> <p>9 documentation today, that anybody who offered</p> <p>10 anything that was different from UEP</p> <p>11 Certified Program would be attacked with a</p> <p>12 vengeance. I was trying to protect the</p> <p>13 integrity of the program.</p> <p>14 Q. Did you believe that UEP was</p> <p>15 trying to attack a competitor of its program</p> <p>16 in submitting this FOIA?</p> <p>17 A. Yes, I do.</p> <p>18 - - -</p> <p>19 (Exhibit Klippen-43, E-mail</p> <p>20 chain, Bates SF111491 - SF111495, was</p> <p>21 marked for identification.)</p> <p>22 - - -</p> <p>23 BY MR. PIZZIRUSSO:</p> <p>24 Q. I have handed you what's been</p> <p>25 marked as Klippen-43, SF111491 to 495. Do</p>



<p style="text-align: right;">Page 202</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 you recognize this document?</p> <p>3 A. I do.</p> <p>4 Q. What is it?</p> <p>5 A. This was an e-mail that I sent</p> <p>6 to Wayne Carlson at Sparboe Farms with the</p> <p>7 minutes from a meeting of the VPC that we</p> <p>8 held in Philadelphia.</p> <p>9 Q. Did you write these minutes?</p> <p>10 A. I did.</p> <p>11 Q. Are these a true and accurate</p> <p>12 copy of those minutes?</p> <p>13 A. They appear to be, yes.</p> <p>14 - - -</p> <p>15 (Exhibit Klippen-44, Announcing</p> <p>16 Changes in VPC, Bates MFI0042703 -</p> <p>17 MFI0042705, was marked for</p> <p>18 identification.)</p> <p>19 - - -</p> <p>20 BY MR. PIZZIRUSSO:</p> <p>21 Q. I've handed you what's been</p> <p>22 marked as Klippen-44, MFI0042704 (sic) to 05.</p> <p>23 Do you recognize this?</p> <p>24 A. I do.</p> <p>25 Q. What is it?</p>	<p style="text-align: right;">Page 204</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 still work with clients in developing</p> <p>3 alternative programs under the Process</p> <p>4 Verified Program of the USDA?</p> <p>5 A. Not currently.</p> <p>6 - - -</p> <p>7 (Exhibit Klippen-45, E-mail</p> <p>8 chain, Bates UE0945329 - UE0945331,</p> <p>9 was marked for identification.)</p> <p>10 - - -</p> <p>11 BY MR. PIZZIRUSSO:</p> <p>12 Q. I am handing you what's been</p> <p>13 marked Klippen-45, UE0945329 to 31. It</p> <p>14 appears to be an e-mail chain starting at the</p> <p>15 very end with an e-mail from you to William</p> <p>16 Roenigk. Is that -- does that look right to</p> <p>17 you?</p> <p>18 A. That's correct, yeah.</p> <p>19 Q. Who is William or Bill Roenigk?</p> <p>20 A. At the time he was their senior</p> <p>21 vice president with the National Chicken</p> <p>22 Council in Washington, D.C.</p> <p>23 Q. You write, "Hi Bill, Hopefully</p> <p>24 UEP will leave me alone now. Hope you are</p> <p>25 doing well."</p>
<p style="text-align: right;">Page 203</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. It was an announcement to the</p> <p>3 people that were supporting me in the</p> <p>4 development of a Process Verified Program. I</p> <p>5 wanted them to be aware that we had completed</p> <p>6 the program and that I had accepted the</p> <p>7 position with Sparboe Farms and would be</p> <p>8 seeking my Ph.D. in animal welfare.</p> <p>9 Q. And Chris Klippen -- what was</p> <p>10 Chris Klippen's role to be in the Verified</p> <p>11 Process Control?</p> <p>12 A. Well, since I was going to be</p> <p>13 working exclusively with one of my clients,</p> <p>14 in order to help with the transition, Chris</p> <p>15 Klippen offered to continue the program and</p> <p>16 continue helping the egg farmers who wanted</p> <p>17 to get process verified through USDA to carry</p> <p>18 that through to completion.</p> <p>19 Q. Is Verified Process Control,</p> <p>20 LLC still in existence?</p> <p>21 A. It is not.</p> <p>22 Q. What has replaced it, if</p> <p>23 anything?</p> <p>24 A. Nothing.</p> <p>25 Q. But you still work -- do you</p>	<p style="text-align: right;">Page 205</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 What did you mean by that?</p> <p>3 A. This followed the FOIA request</p> <p>4 two times I've been corrected. In the</p> <p>5 process of trying to develop the Process</p> <p>6 Verified Program I felt and experienced</p> <p>7 restrictions by UEP constantly in trying to</p> <p>8 prevent me even working with USDA, and I was</p> <p>9 moving on.</p> <p>10 Q. Then somehow if you look on</p> <p>11 page 945330, the second page, it gets</p> <p>12 forwarded around and gets up to Andrew Long.</p> <p>13 Do you know who Andrew Long is?</p> <p>14 A. I do not.</p> <p>15 Q. And Andrew Long forwards it to</p> <p>16 Chad Gregory. And Chad forwards it to Gene</p> <p>17 Gregory. "Check out the quote from Ken</p> <p>18 Klippen below. 'Hopefully UEP will leave me</p> <p>19 along now??????'" And then Gene sends it to</p> <p>20 a whole slew of people. And he writes, "To</p> <p>21 All," on the first page now of 329, "If you</p> <p>22 will read down through these emails you will</p> <p>23 find the Sparboe Company announcement of the</p> <p>24 employment of Ken Klippen. I will not</p> <p>25 comment on his employment and do wish him and</p>

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<p style="text-align: right;">Page 206</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the Sparboe Company the best. The problem is</p> <p>3 his comment to William Roenigk of the</p> <p>4 National Chicken Council in which he says</p> <p>5 'hopefully UEP will leave me alone now.'</p> <p>6 And then Mike McLeod writes</p> <p>7 back, "Gene, On the bright side, I guess this</p> <p>8 means he won't still be trying to form a</p> <p>9 rival organization."</p> <p>10 Were you trying to form a rival</p> <p>11 organization?</p> <p>12 A. Not at this time.</p> <p>13 Q. And then Gene responds, "I</p> <p>14 think this means that Sparboe will attempt to</p> <p>15 sell other producers on following their lead</p> <p>16 in government relations and animal welfare.</p> <p>17 They will say they don't need UEP because</p> <p>18 Sparboe can provide those services. It also</p> <p>19 means that Klippen will be used with</p> <p>20 consumers to say that he is the leader on</p> <p>21 animal welfare and they don't need the UEP</p> <p>22 Certified program. I can't think of anything</p> <p>23 good that will come out of this marriage.</p> <p>24 Sparboe has tried everything possible to</p> <p>25 uncut UEP."</p>	<p style="text-align: right;">Page 208</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 chain, Bates UE0715493 &amp; UE0715494,</p> <p>3 was marked for identification.)</p> <p>4 - - -</p> <p>5 BY MR. PIZZIRUSSO:</p> <p>6 Q. Showing you what's been marked</p> <p>7 as Klippen-46. It is Bates UE0715493 to 494.</p> <p>8 It appears to be an e-mail chain between Gene</p> <p>9 Gregory and Joy Mench. And the talking</p> <p>10 about, if you go to the second page, July 8,</p> <p>11 2008, "Conference at Iowa State," Gene</p> <p>12 Gregory mentions to Joy, "There is also the</p> <p>13 possibility of Ken Klippen (former UEP</p> <p>14 employee) and now working for the Sparboe</p> <p>15 Company to be there. If so, you might expect</p> <p>16 him to direct comments toward you that</p> <p>17 questions the credibility of the UEP</p> <p>18 program."</p> <p>19 Do you recall what conference</p> <p>20 Gene is referring to here?</p> <p>21 A. I do.</p> <p>22 Q. And did you attend?</p> <p>23 A. I did.</p> <p>24 Q. Did you direct any comments to</p> <p>25 Joy Mench about the UEP program?</p>
<p style="text-align: right;">Page 207</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Do you think that's an accurate</p> <p>3 representation?</p> <p>4 A. It is not.</p> <p>5 Q. And then Mike replies, "Gene, I</p> <p>6 certainly hope this is not the case. I can't</p> <p>7 see Sparboe's competitors turning their</p> <p>8 representation over to and following the lead</p> <p>9 of Sparboe. I was disturbed to have Sparboe</p> <p>10 say that Ken has always served for years as</p> <p>11 the nation's egg industry spokesperson on</p> <p>12 animal welfare. However, I don't think this</p> <p>13 false claim will have any credibility with</p> <p>14 anyone who is familiar with our industry. In</p> <p>15 the end they will fail."</p> <p>16 Did you and Sparboe fail?</p> <p>17 A. We did not. I was the industry</p> <p>18 spokesperson when I was working at UEP, and</p> <p>19 we have documentation to support that.</p> <p>20 Q. So do you think -- what do you</p> <p>21 think of his characterization?</p> <p>22 A. I think he's playing to Gene's</p> <p>23 ego. When I say "he," Mike McLeod.</p> <p>24 - - -</p> <p>25 (Exhibit Klippen-46, E-mail</p>	<p style="text-align: right;">Page 209</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I did not.</p> <p>3 Q. And Joy responds, "Hi Gene,"</p> <p>4 skipping ahead, this will change my talk a</p> <p>5 bit to highlight the UEP program - I really</p> <p>6 wasn't going to talk much about any</p> <p>7 particular program in detail - my brief was</p> <p>8 more to give a historical overview about how</p> <p>9 research and teaching in animal welfare in</p> <p>10 the U.S. has grown during the last 20 years.</p> <p>11 But now that I know these folks will be there</p> <p>12 I will talk MUCH MORE about UEP!</p> <p>13 Do you recall her talking about</p> <p>14 UEP at this program?</p> <p>15 A. I do not. I can't recall what</p> <p>16 she said specifically, no.</p> <p>17 Q. And Gene responds on the first</p> <p>18 page, 493, the third e-mail down, "In regard</p> <p>19 to Klippen, I don't know if he is attending</p> <p>20 but would guess so because he is hired by the</p> <p>21 Sparboe Company. He has been trying to</p> <p>22 create his own PVP program and trying to</p> <p>23 convince some of our producers to drop off</p> <p>24 the UEP Certified program and go to his. You</p> <p>25 can only learn about his program by signing a</p>

<p style="text-align: right;">Page 210</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 confidential agreements. So while our</p> <p>3 program is up on website for the world to</p> <p>4 see, his program is kept in secret. So in</p> <p>5 order to promote the Klippen/Sparboe program</p> <p>6 either Klippen or Dr. Medina may try to</p> <p>7 disparage the UEP program either through</p> <p>8 questions or comments. Hope none of this</p> <p>9 happens."</p> <p>10 Who is Dr. Medina?</p> <p>11 A. Dr. Hugo Medina was the</p> <p>12 veterinarian that worked for Sparboe Farms.</p> <p>13 He died a couple of years back. Dr. Medina</p> <p>14 was on the program. Neither he nor I said</p> <p>15 anything disparaging about UEP's program.</p> <p>16 Q. Were you actively trying to</p> <p>17 convince producers to drop UEP and go to your</p> <p>18 program?</p> <p>19 A. I was not.</p> <p>20 Q. And Joy responds to that, "I</p> <p>21 don't think Ken wants to tussle with me so I</p> <p>22 doubt if he would say much (in public</p> <p>23 anyway). I don't know Medina...so who knows</p> <p>24 what he might do."</p> <p>25 Do you know why Joy would</p>	<p style="text-align: right;">Page 212</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 I have developed a great friendship with Roy</p> <p>3 Patterson."</p> <p>4 Do you know who Roy Patterson</p> <p>5 was?</p> <p>6 A. I do not.</p> <p>7 Q. "A BIG topic of discussion for</p> <p>8 almost everyone at the convention was the</p> <p>9 Wal-Mart DC switches."</p> <p>10 A. That's distribution center.</p> <p>11 Q. Do you recall around this time</p> <p>12 period that Wal-Mart -- these Wal-Mart</p> <p>13 distribution center switches that he's</p> <p>14 referring to?</p> <p>15 A. I do.</p> <p>16 Q. What happened?</p> <p>17 A. The sales team at Sparboe had</p> <p>18 taken me down to the headquarters of Wal-Mart</p> <p>19 to present the Process Verified Program.</p> <p>20 They were so impressed, that they wanted to</p> <p>21 have Wal-Mart purchase product from Sparboe</p> <p>22 Farms as a result.</p> <p>23 Q. And Mike continues, As I said,</p> <p>24 Friedow sat at Mahard's table during the</p> <p>25 banquet. Gene, you need to know a couple of</p>
<p style="text-align: right;">Page 211</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 suggest that you don't want to tussle with</p> <p>3 her?</p> <p>4 A. I do not know. I know Joy. I</p> <p>5 know Dr. Mench. But I don't know why she</p> <p>6 would make a statement like that, unless it's</p> <p>7 to reassure Gene that she can handle her own.</p> <p>8 - - -</p> <p>9 (Exhibit Klippen-47, 7/28/08</p> <p>10 E-mail, Bates UE0198154, was marked</p> <p>11 for identification.)</p> <p>12 - - -</p> <p>13 BY MR. PIZZIRUSSO:</p> <p>14 Q. I've handed you what's been</p> <p>15 marked as Klippen-47. It's UE0198154. Sorry</p> <p>16 about the small type. I know it's very hard</p> <p>17 to read. This appears to be an e-mail from</p> <p>18 Mike McGriff to Gene and Chad Gregory on</p> <p>19 July 28, 2008. He's talking about the Texas</p> <p>20 Poultry Federation Convention. Were you at</p> <p>21 that, do you recall?</p> <p>22 A. I was not.</p> <p>23 Q. If you go three paragraphs</p> <p>24 down, "One thing Friedow apparently did not</p> <p>25 know (or maybe he did) is that over the years</p>	<p style="text-align: right;">Page 213</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 things. Friedow told Roy (who then obviously</p> <p>3 told me) that when you called the category</p> <p>4 manager at Wal-Mart, that coincidentally</p> <p>5 Friedow and Sparboe (what he said was "we")</p> <p>6 were in his office. He said that the</p> <p>7 Wal-Mart guy put you on the speakerphone and</p> <p>8 that they heard the entire conversation.</p> <p>9 Friedow told Roy that it got a little</p> <p>10 "heated" on the phone. I would assume if</p> <p>11 Friedow were there, then certainly some</p> <p>12 combination of Beth, Wayne and most</p> <p>13 definitely Klippen were also there.</p> <p>14 Were you there when this</p> <p>15 happened?</p> <p>16 A. I was.</p> <p>17 Q. "It somewhat adds up since I</p> <p>18 remember you saying that the guy told you he</p> <p>19 was looking at the PVP program at that very</p> <p>20 minute. Anyway, whatever was said, they</p> <p>21 apparently heard. The only other explanation</p> <p>22 would be that the Wal-Mart buyer simply told</p> <p>23 Sparboe about the conversation and Friedow</p> <p>24 dropped the story to Roy, for some reason</p> <p>25 hoping he would tell me...doubtful."</p>

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<p style="text-align: right;">Page 214</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 So what happened during that</p> <p>3 meeting when Gene called while you were</p> <p>4 meeting with Wal-Mart?</p> <p>5 MS. LEVINE: Object to the form</p> <p>6 of the question.</p> <p>7 THE WITNESS: The Sparboe</p> <p>8 salesperson, his name was Lee</p> <p>9 Regensburger, and I made a</p> <p>10 presentation to the buyer at Wal-Mart.</p> <p>11 After we had finished the</p> <p>12 presentation, Lee wanted to visit with</p> <p>13 part of the distribution chain people.</p> <p>14 We stepped out of that room. We came</p> <p>15 back to say good-bye and the buyer</p> <p>16 said you won't believe what just</p> <p>17 happened. He had just received a</p> <p>18 phone call from Gene trying to</p> <p>19 convince him not to buy Sparboe eggs.</p> <p>20 My mouth fell open that anybody would</p> <p>21 call a buyer and tell them not to buy</p> <p>22 our eggs. And yet the details of the</p> <p>23 Process Verified Program were</p> <p>24 presented to Wal-Mart. I gave them</p> <p>25 the documentation to show the</p>	<p style="text-align: right;">Page 216</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 marked Exhibit 48, UE0198155. It appears to</p> <p>3 be an e-mail from Mike McGriff, although it's</p> <p>4 missing the upper portion.</p> <p>5 MS. LEVINE: I'm going to object</p> <p>6 to using this document without the</p> <p>7 whole document.</p> <p>8 MR. PIZZIRUSSO: That's fine.</p> <p>9 BY MR. PIZZIRUSSO:</p> <p>10 Q. The second paragraph says,</p> <p>11 "Jeff Hardin and I talked quite a bit about</p> <p>12 the Wal-Mart situation. I told him all of</p> <p>13 the producers that lost Wal-Mart business</p> <p>14 should simply refuse to sell Sparboe eggs.</p> <p>15 He told me that he had actually suggested to</p> <p>16 Dolph that the top 20 suppliers all agree not</p> <p>17 to sell Sparboe any eggs and watch Sparboe</p> <p>18 completely screw up their Wal-Mart program</p> <p>19 within a year. Everyone seems to be in</p> <p>20 general agreement that the Wal-Mart situation</p> <p>21 is going to have a negative impact on the egg</p> <p>22 market."</p> <p>23 Do you know who Jeff Hardin is?</p> <p>24 A. I know the name, but I can't</p> <p>25 picture him in my mind right now. So it's</p>
<p style="text-align: right;">Page 215</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 extensive nature of the documentation.</p> <p>3 They were convinced at that time that</p> <p>4 we had an acceptable program. They</p> <p>5 were going to allow UEP certified eggs</p> <p>6 to be sold through the Wal-Mart</p> <p>7 distribution centers or Sparboe's</p> <p>8 Process Verified Program. We were</p> <p>9 happy with that. Apparently you can</p> <p>10 see that UEP was not.</p> <p>11 BY MR. PIZZIRUSSO:</p> <p>12 Q. Do you recall specifically what</p> <p>13 Gene Gregory said when he was speaking to the</p> <p>14 Wal-Mart representative?</p> <p>15 A. We did not hear the</p> <p>16 conversation. That is a mischaracterization</p> <p>17 of what took place. We were told by the</p> <p>18 buyer.</p> <p>19 - - -</p> <p>20 (Exhibit Klippen-48, E-mail from</p> <p>21 Mike McGriff, Bates UE0198155, was</p> <p>22 marked for identification.)</p> <p>23 - - -</p> <p>24 BY MR. PIZZIRUSSO:</p> <p>25 Q. I'm handing you what's been</p>	<p style="text-align: right;">Page 217</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 not somebody I had dealings with on any</p> <p>3 extensive basis.</p> <p>4 Q. Do you know if Sparboe</p> <p>5 experienced any kind of retaliation when it</p> <p>6 picked up the Wal-Mart DCs?</p> <p>7 A. I am not aware of any</p> <p>8 disruption to Sparboe's ability to supply the</p> <p>9 eggs.</p> <p>10 Q. We talked about just a second</p> <p>11 ago, Gene Gregory contacting Wal-Mart. Do</p> <p>12 you know if Gene Gregory had any other</p> <p>13 conversations with Wal-Mart about that?</p> <p>14 A. No. I'm not aware of any other</p> <p>15 conversations that Gene had with Wal-Mart.</p> <p>16 Q. Do you know of any other</p> <p>17 conversations that another UEP member had</p> <p>18 with Wal-Mart?</p> <p>19 A. I am aware of another one.</p> <p>20 Q. What is that?</p> <p>21 A. Chad Gregory contacted Wal-Mart</p> <p>22 and made inferences that should Wal-Mart buy</p> <p>23 eggs from Sparboe, that they could be facing</p> <p>24 an FTC lawsuit. Wal-Mart asked for the</p> <p>25 attorneys that would be involved. Chad could</p>

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<p style="text-align: right;">Page 218</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 not remember the names of the attorneys, but</p> <p>3 then he referred the call to Rex Barnes who</p> <p>4 at that time was the deputy administrator at</p> <p>5 USDA. Rex Barnes confirmed that he had</p> <p>6 numerous conversations with the FTC attorneys</p> <p>7 and he was not aware of any lawsuit that was</p> <p>8 pending or any likelihood of a lawsuit. So</p> <p>9 that was the only other -- you have that</p> <p>10 document.</p> <p>11 Q. I have that document.</p> <p>12 - - -</p> <p>13 (Exhibit Klippen-49, E-mail</p> <p>14 chain, Bates SF082672 - SF082676, was</p> <p>15 marked for identification.)</p> <p>16 - - -</p> <p>17 BY MR. PIZZIRUSSO:</p> <p>18 Q. I'm handing you now what's been</p> <p>19 marked Klippen-49. It is Bates SF082672</p> <p>20 through 2676. It appears to be a long e-mail</p> <p>21 chain between Chad Gregory, Rex Barnes and</p> <p>22 others. Is this what you were just referring</p> <p>23 to?</p> <p>24 A. Yes.</p> <p>25 Q. On the last page, this is an</p>	<p style="text-align: right;">Page 220</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 you have had any conversations with the FTC</p> <p>3 around Wal-Mart being sued for using your</p> <p>4 program to verify that Sparboe is compliant</p> <p>5 for Animal Welfare? I found the statements</p> <p>6 to be a little -- by the UEP to be a little</p> <p>7 strange.</p> <p>8 Then Rex says at the bottom of</p> <p>9 page 2, "I have not heard of anything</p> <p>10 concerning a lawsuit. If a logo is proposed</p> <p>11 in relation to the PVP program I will work</p> <p>12 with FTC before we approve its use."</p> <p>13 So did you think this was an</p> <p>14 accurate representation that Chad had made to</p> <p>15 Tony?</p> <p>16 MS. LEVINE: Object to the form</p> <p>17 of the question.</p> <p>18 THE WITNESS: No, I do not.</p> <p>19 BY MR. PIZZIRUSSO:</p> <p>20 Q. And then eventually, let's see,</p> <p>21 Tony then responds to a couple of people, and</p> <p>22 then it gets to Lee Regensburger, who is Lee?</p> <p>23 A. Lee was the vice president of</p> <p>24 sales at Sparboe Farms. He's no longer</p> <p>25 there.</p>
<p style="text-align: right;">Page 219</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 e-mail from Tony Airoso, A-I-R-O-S-O, to Chad</p> <p>3 Gregory and Gene Gregory. And Tony says at</p> <p>4 point 2 on the last page, 676, "You indicated</p> <p>5 that the FTC was watching the situation and</p> <p>6 that they could file a lawsuit. I would like</p> <p>7 to talk with the contact at the FTC that</p> <p>8 indicated that to you so that we can have our</p> <p>9 lawyer meet with them to ensure that we are</p> <p>10 following the law appropriately."</p> <p>11 That's what you were referring</p> <p>12 to a little while ago?</p> <p>13 A. Correct.</p> <p>14 Q. And then Chad responds on page</p> <p>15 4, it's 2675, the first full paragraph, As</p> <p>16 for your question regarding FTC, I don't</p> <p>17 remember saying the FTC was possibly going to</p> <p>18 "sue" Wal-Mart. I do remember saying that</p> <p>19 the "FTC was looking into this" and this is</p> <p>20 factual. You can contact Rex Barnes at USDA</p> <p>21 to get verification on all this. And it</p> <p>22 appears that Tony then sent this to Rex</p> <p>23 Barnes.</p> <p>24 If you flip again to the next</p> <p>25 page. Could you please help me understand if</p>	<p style="text-align: right;">Page 221</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And then you respond to Lee</p> <p>3 about halfway down, a little more, "I also</p> <p>4 learned from Alan in his conversation</p> <p>5 recently with Chad Gregory that statements</p> <p>6 made by him include how the scientific</p> <p>7 advisors used for the PVP were sorry they</p> <p>8 assisted us. That is another fabrication as</p> <p>9 evidenced by the fact that the chairman of</p> <p>10 that scientific advisory group has agreed to</p> <p>11 attach his name to our production</p> <p>12 guidelines."</p> <p>13 What is that referring to?</p> <p>14 A. Again, the -- I was trying to</p> <p>15 protect these scientists from this kind of</p> <p>16 activity by UEP. Finally, in talking to one</p> <p>17 of the scientists, he said use my name. I'm</p> <p>18 tired of this kind of nonsense that UEP is</p> <p>19 generating against the Process Verified</p> <p>20 Program. So we did all we could to provide</p> <p>21 whatever documentation Wal-Mart wanted, USDA</p> <p>22 wanted in order to ensure that we could</p> <p>23 actually sell eggs under the Process Verified</p> <p>24 Program.</p> <p>25 MR. PIZZIRUSSO: I think we need</p>

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<p style="text-align: right;">Page 222</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 to change tapes again.</p> <p>3 VIDEOGRAPHER: Going off the</p> <p>4 record. 3:19 p.m. This is the end of</p> <p>5 tape number four.</p> <p>6 - - -</p> <p>7 (A recess was taken.)</p> <p>8 - - -</p> <p>9 VIDEOGRAPHER: We're on the</p> <p>10 record. 3:36 p.m. This is the</p> <p>11 beginning of tape number five.</p> <p>12 - - -</p> <p>13 (Exhibit Klippen-50, E-mail</p> <p>14 chain, Bates SF120286 - SF120289, was</p> <p>15 marked for identification.)</p> <p>16 - - -</p> <p>17 BY MR. PIZZIRUSSO:</p> <p>18 Q. I've handed you what's been</p> <p>19 marked as Klippen-50. And that's Bates</p> <p>20 SF120286 to 289. Do you recognize this</p> <p>21 document?</p> <p>22 A. I do.</p> <p>23 Q. And what is it?</p> <p>24 A. A letter that the owner of</p> <p>25 Sparboe Farms, Beth Schnell, sent to Gary</p>	<p style="text-align: right;">Page 224</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Do you know what she was</p> <p>3 referring to?</p> <p>4 A. I do.</p> <p>5 Q. What was that?</p> <p>6 A. Sparboe Farms was also selling</p> <p>7 eggs to the Canadians, to CEMA, and I believe</p> <p>8 it was Gene Gregory that also contacted them</p> <p>9 and indicated that they were not part of UEP</p> <p>10 certified and they shouldn't buy their eggs.</p> <p>11 Q. That was a document we looked</p> <p>12 at earlier today, is that what you're</p> <p>13 referring to?</p> <p>14 A. Correct.</p> <p>15 Q. Page 3, Bates 288, the first</p> <p>16 full paragraph it says, "It is our belief</p> <p>17 that Mr. Gregory's activities in the</p> <p>18 marketplace could be construed as</p> <p>19 interference with our business relationships</p> <p>20 and a possible violation of the anti-trust</p> <p>21 laws. At the very least, how can Mr. Gregory</p> <p>22 justify such conduct toward one of his own</p> <p>23 members? Surely, a dues paying member of UEP</p> <p>24 deserves better treatment at the hands of its</p> <p>25 own President."</p>
<p style="text-align: right;">Page 223</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 West who at that time was chairman of United</p> <p>3 Egg Producers in Modesto, California. She</p> <p>4 was reminding him of the financial support</p> <p>5 they had given to their efforts in supporting</p> <p>6 UEP over the years. She was contacting him</p> <p>7 directly because of UEP's contacting her</p> <p>8 customers. She indicated this was with the</p> <p>9 intent of interfering with the business</p> <p>10 relationships. That was her concern, it</p> <p>11 might go too far.</p> <p>12 Q. Did you draft this for her?</p> <p>13 A. I did not draft the letter. I</p> <p>14 provided input concerning some of my</p> <p>15 conversations with the folks at Wal-Mart so</p> <p>16 that she would have my perspective.</p> <p>17 Q. Do you know if it actually was</p> <p>18 sent to Gary West?</p> <p>19 A. I do not know if it was sent.</p> <p>20 Q. Turning to page 2, in the</p> <p>21 middle of the page it says, "Regrettably,</p> <p>22 this is not the first time that Mr. Gregory</p> <p>23 has communicated with our customers.</p> <p>24 Attached is an email that shows Mr. Gregory</p> <p>25 has engaged in this type of conduct before."</p>	<p style="text-align: right;">Page 225</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 So Sparboe was still a member</p> <p>3 at the time that this contact with Wal-Mart</p> <p>4 occurred?</p> <p>5 MR. HUTCHINSON: Objection to</p> <p>6 form.</p> <p>7 THE WITNESS: I can't remember</p> <p>8 when they withdrew their membership.</p> <p>9 I think we had some documentation</p> <p>10 earlier. They were a member, then</p> <p>11 they withdrew the membership. We saw</p> <p>12 the documents where they withdrew all</p> <p>13 the memberships in all the</p> <p>14 organizations within UEP's family, and</p> <p>15 then they rejoined, but it was long</p> <p>16 after 2008 when they rejoined. It was</p> <p>17 more like 2012 before they rejoined</p> <p>18 UEP. So I can't answer for why she</p> <p>19 stated it in that fashion.</p> <p>20 - - -</p> <p>21 (Exhibit Klippen-51, E-mail</p> <p>22 chain, Bates UE0715275, was marked for</p> <p>23 identification.)</p> <p>24 - - -</p> <p>25 BY MR. PIZZIRUSSO:</p>

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<p style="text-align: right;">Page 226</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. I've handed you what's been</p> <p>3 marked Klippen-51. It's Bates UE0715275. It</p> <p>4 an e-mail from Mike Bynum to Gene Gregory and</p> <p>5 a response from Gene to Mike. Do you know</p> <p>6 who Mike -- Michael Bynum is?</p> <p>7 A. I do.</p> <p>8 Q. And who is he?</p> <p>9 A. Mike Bynum is or was an egg</p> <p>10 farmer in Florida. I think he has retired,</p> <p>11 if I'm not mistaken. But Mike Bynum did</p> <p>12 operate an egg farm down in Florida.</p> <p>13 Q. And so Mike writes to Gene,</p> <p>14 "But with Sparboe picking up 5 or so WalMart</p> <p>15 DCs, and them having their own animal welfare</p> <p>16 program conducted by Dr. Klippen (ha ha),</p> <p>17 does that mean that WalMart is moving away</p> <p>18 from UEP-certified as a spec for its eggs,</p> <p>19 and will now allow other programs? I'm</p> <p>20 concerned about the spreading to other major</p> <p>21 retailers like a contagion.</p> <p>22 "Is WalMart going to stand firm</p> <p>23 on UEP and force all its suppliers to adhere</p> <p>24 to those guidelines or accept something</p> <p>25 else/lesser?"</p>	<p style="text-align: right;">Page 228</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 "Any retailer would be foolish</p> <p>3 to follow what Wal-Mart is doing and once</p> <p>4 they learn the details they will understand."</p> <p>5 Did you know if Wal-Mart</p> <p>6 required 100 percent implementation on all of</p> <p>7 its suppliers' product?</p> <p>8 A. Wal-Mart never communicated</p> <p>9 that to me. However, Sparboe did put 100</p> <p>10 percent of their company-owned facilities and</p> <p>11 did get certification by USDA to be PVP</p> <p>12 certified. So Sparboe did live up to -- if</p> <p>13 they made that commitment to Wal-Mart, they</p> <p>14 lived up to it because I was there when the</p> <p>15 government was inspecting those farms.</p> <p>16 - - -</p> <p>17 (Exhibit Klippen-52, Chad</p> <p>18 Gregory Confronting Ken Klippen at</p> <p>19 Conference Center for Food Integrity</p> <p>20 Marriott Hotel, 350 West Maryland St.,</p> <p>21 Indianapolis, IN October 8, 2008 12:30</p> <p>22 a.m., Bates SF107103, was marked for</p> <p>23 identification.)</p> <p>24 - - -</p> <p>25 BY MR. PIZZIRUSSO:</p>
<p style="text-align: right;">Page 227</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Do you know if Wal-Mart forced</p> <p>3 all of its suppliers to adhere to this same</p> <p>4 program?</p> <p>5 A. They did not.</p> <p>6 Q. And then Gene responds to Mike,</p> <p>7 Both Chad and I have either spoken on the</p> <p>8 phone or made -- have spoken of the phone on</p> <p>9 made a personal visit to Wal-Mart. I think</p> <p>10 there's some typos there. "Wal-Mart has</p> <p>11 assured us that their egg suppliers will have</p> <p>12 to meet animal welfare standards that are</p> <p>13 equal to or better than the UEP Certified</p> <p>14 program. At this point they have been sold</p> <p>15 by Klippen and Sparboe that the PVP program</p> <p>16 is better than the...UEP program. Wal-Mart</p> <p>17 has also assured us that Sparboe will have to</p> <p>18 meet these standards on 100% of their birds.</p> <p>19 We have serious doubts whether Sparboe will</p> <p>20 truly do this on all 12 million of their</p> <p>21 birds so we are continuing to check with USDA</p> <p>22 to find out how many farms they audit.</p> <p>23 "We are staying on this to</p> <p>24 monitor and make sure Wal-Mart lives up to</p> <p>25 their word on the 100%.</p>	<p style="text-align: right;">Page 229</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'm handing you what's been</p> <p>3 marked as Klippen Exhibit 52.</p> <p>4 MS. LEVINE: I'm going to object</p> <p>5 for a minute. Let me read it since</p> <p>6 it's marked "HIGHLY CONFIDENTIAL"</p> <p>7 before you give it to the witness.</p> <p>8 MR. PIZZIRUSSO: It's a document</p> <p>9 that I believe Mr. Klippen wrote.</p> <p>10 MS. LEVINE: That's fine. Just</p> <p>11 when we get highly confidential, we</p> <p>12 usually hold off until reviews it.</p> <p>13 BY MR. PIZZIRUSSO:</p> <p>14 Q. It's Bates stamp SF107103.</p> <p>15 MS. ANDERSON: Would you like a</p> <p>16 copy, Counsel for Sparboe?</p> <p>17 MR. HUTCHINSON: I would like a</p> <p>18 copy.</p> <p>19 BY MR. PIZZIRUSSO:</p> <p>20 Q. Do you recognize this document?</p> <p>21 A. I do.</p> <p>22 Q. And what is it?</p> <p>23 A. It was an internal document</p> <p>24 that I provided Sparboe as it relates to a</p> <p>25 confrontation that took place at a conference</p>



<p style="text-align: right;">Page 230</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 in Indianapolis, Indiana.</p> <p>3 Q. And what was the name of the</p> <p>4 conference?</p> <p>5 A. It was the Center for Food</p> <p>6 Integrity Conference. I was one of the</p> <p>7 delegates.</p> <p>8 Q. Is this a true and accurate</p> <p>9 representation of your -- the notes that you</p> <p>10 prepared about that conference?</p> <p>11 A. Yes.</p> <p>12 Q. Can you describe without</p> <p>13 reading the entire document to us, which I've</p> <p>14 been doing all day, generally what happened</p> <p>15 at this meeting?</p> <p>16 A. Yes. I was sitting in my</p> <p>17 chair. He came around and sat in front of</p> <p>18 me. And in a very confrontational way, he</p> <p>19 started to berate me and I just listened to</p> <p>20 him for a few moments. At one point, to put</p> <p>21 a stop to his verbal abuse, I simply said to</p> <p>22 him, I'm not the one being sued. And he went</p> <p>23 ballistic at that point. And his comments</p> <p>24 were, we're watching you, we're keeping an</p> <p>25 eye on you. And my comment to him was I had</p>	<p style="text-align: right;">Page 232</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (Exhibit Klippen-53, E-mail</p> <p>4 chain, Bates SF081096 - SF081100, was</p> <p>5 marked for identification.)</p> <p>6 - - -</p> <p>7 BY MR. PIZZIRUSSO:</p> <p>8 Q. I'm now handing you what's been</p> <p>9 marked as Klippen Exhibit 53, Bates SF081095</p> <p>10 to 1100. Do you recognize this document?</p> <p>11 A. I do.</p> <p>12 Q. And what is it?</p> <p>13 A. Again, it was an internal</p> <p>14 document that I submitted to Lee Regensburger</p> <p>15 and Alan Andrews in the sales and marketing</p> <p>16 department at Sparboe. Again, I reiterated</p> <p>17 some of the comments from the conference that</p> <p>18 took place that I just attended, the Center</p> <p>19 for Food Integrity. At that time, I put down</p> <p>20 in writing that I thought it was time that we</p> <p>21 withdrew your membership in UEP based on some</p> <p>22 of the posturing that was done by Chad at</p> <p>23 this conference, how he acted toward me. I</p> <p>24 just simply said that's my vote, that we</p> <p>25 withdraw.</p>
<p style="text-align: right;">Page 231</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 nothing to do with this lawsuit. I put that</p> <p>3 in documentation in case there was any need</p> <p>4 at a future date to bring this back forward</p> <p>5 and show how the folks at UEP were treating</p> <p>6 me in public forums.</p> <p>7 Q. And then he said in point 9</p> <p>8 there, that no producers liked you with the</p> <p>9 exception of your current employer.</p> <p>10 MS. LEVINE: Object to the form.</p> <p>11 BY MR. PIZZIRUSSO:</p> <p>12 Q. Is that right?</p> <p>13 MS. LEVINE: Object to the form</p> <p>14 of the question. Lacks foundation,</p> <p>15 coming from a lawyer.</p> <p>16 THE WITNESS: This was a</p> <p>17 conference that involved people from</p> <p>18 all over the industry and other</p> <p>19 industries as well. He made a comment</p> <p>20 that nobody at the Center for Food</p> <p>21 Integrity liked my activities. I went</p> <p>22 right to the CEO immediately and</p> <p>23 approached him, and his comment was,</p> <p>24 we understand the politics behind this</p> <p>25 so don't worry.</p>	<p style="text-align: right;">Page 233</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. So it does appear then that UEP</p> <p>3 was a member -- I'm sorry, that Sparboe was a</p> <p>4 member of UEP if you were suggesting that</p> <p>5 they should withdraw their membership?</p> <p>6 A. Yeah, that's correct. I could</p> <p>7 not remember exactly when they withdrew their</p> <p>8 membership, but it was close to this period.</p> <p>9 And then they were non-members for a period</p> <p>10 of time and then they rejoined again.</p> <p>11 Q. At the end you say, "Do we need</p> <p>12 to participate in an organization that</p> <p>13 confronts its members in such a manner? Will</p> <p>14 their attacks never end??"</p> <p>15 Did you feel that this was an</p> <p>16 attack on one of UEP's own members?</p> <p>17 A. Yes, I did.</p> <p>18 Q. Were you aware of them</p> <p>19 attacking any other members like the way that</p> <p>20 you felt you and Sparboe were attacked?</p> <p>21 MR. MCKENNEY: Objection to</p> <p>22 form. Lacks foundation. Calls for</p> <p>23 speculation.</p> <p>24 MS. LEVINE: Objection.</p> <p>25 THE WITNESS: I'm not aware.</p>

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<p style="text-align: right;">Page 234</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. PIZZIRUSSO:</p> <p>3 Q. Do you know if Sparboe did</p> <p>4 eventually withdraw from UEP after this</p> <p>5 occurred?</p> <p>6 A. Shortly thereafter, they did</p> <p>7 withdraw.</p> <p>8 - - -</p> <p>9 (Exhibit Klippen-54, 10/11/08</p> <p>10 E-mail, Bates UE0714970, was marked</p> <p>11 for identification.)</p> <p>12 - - -</p> <p>13 BY MR. PIZZIRUSSO:</p> <p>14 Q. I've handed you what's been</p> <p>15 marked as Klippen-54, UE0714970, an e-mail</p> <p>16 from Gene Gregory to Bob Krouse and others</p> <p>17 are copied. Do you know who Bob Krouse is?</p> <p>18 A. I do.</p> <p>19 Q. And who is he?</p> <p>20 A. He is with Midwest Poultry</p> <p>21 Services in Indiana. He also served as</p> <p>22 chairman of United Egg Producers.</p> <p>23 Q. He says, "You requested a copy</p> <p>24 of Ken Klippen's (PVP) program used by</p> <p>25 Sparboe in hopes of gaining the Wal-Mart</p>	<p style="text-align: right;">Page 236</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 cage space of 67 square inches, that's what</p> <p>3 the science showed. The fact that UEP had</p> <p>4 67 square inches and the PVP is just simply a</p> <p>5 reflection of the science at the time. This</p> <p>6 question about house average, since the</p> <p>7 majority of the industry was trying to house</p> <p>8 average because there was a transition to</p> <p>9 that 67 square inches, we were following what</p> <p>10 the industry was doing. So we were creating</p> <p>11 a competitive program that had much more</p> <p>12 documentation than the UEP Certified Program,</p> <p>13 and Wal-Mart could see the difference.</p> <p>14 Q. And then it says, "...UEP</p> <p>15 programs states very clearly on the cover</p> <p>16 page the following: 'Copyright 2003, United</p> <p>17 Egg Producers All Rights Reserved.' As a</p> <p>18 result of this, maybe we need to have a</p> <p>19 discussion about whether to file</p> <p>20 infringements against the UEP program." I</p> <p>21 think he meant PVP program, but I don't know,</p> <p>22 it might be a typo.</p> <p>23 Did he ever file any</p> <p>24 infringement action against you?</p> <p>25 A. He did not.</p>
<p style="text-align: right;">Page 235</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 business. As you know this created one of</p> <p>3 the most disrupted situations in the market</p> <p>4 that we have ever seen."</p> <p>5 Do you agree that this created</p> <p>6 a disrupted situation in the market?</p> <p>7 A. I agree that it allowed Sparboe</p> <p>8 to sell their eggs to Wal-Mart without having</p> <p>9 to be part of the UEP Certified Program.</p> <p>10 That was one customer.</p> <p>11 Q. Do you think it's fair to</p> <p>12 characterize it as the most -- one of the</p> <p>13 most disrupted situations in the market?</p> <p>14 A. I do not.</p> <p>15 Q. And he says, "You will find</p> <p>16 many guidelines that are stolen from the UEP</p> <p>17 Certified program and you will easily</p> <p>18 identify them. Even down to using the 'house</p> <p>19 average' for cage space."</p> <p>20 Do you agree that you stole the</p> <p>21 UEP Certified Guidelines?</p> <p>22 A. The guidelines I developed</p> <p>23 provided the science behind them. UEP's did</p> <p>24 not show the science. Science is science.</p> <p>25 And if the science suggests that we have a</p>	<p style="text-align: right;">Page 237</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did he ever directly confront</p> <p>3 you as infringing?</p> <p>4 A. No.</p> <p>5 Q. So is it fair to say that you</p> <p>6 have just seen for the first time today a lot</p> <p>7 of the internal opposition that UEP was</p> <p>8 leading to your program?</p> <p>9 MS. ANDERSON: Objection to</p> <p>10 form.</p> <p>11 MS. LEVINE: Object to the form.</p> <p>12 THE WITNESS: I have seen</p> <p>13 documents today that I have never seen</p> <p>14 before. I knew there was opposition</p> <p>15 to the development of the Process</p> <p>16 Verified Program because of what</p> <p>17 people within the industry and also</p> <p>18 within the federal government told me</p> <p>19 directly. But today I've seen</p> <p>20 documents that I had no idea even</p> <p>21 existed. Quite frankly, I'm very</p> <p>22 surprised to the extent that UEP went</p> <p>23 to try to discredit and vilify the</p> <p>24 Process Verified Program.</p> <p>25 BY MR. PIZZIRUSSO:</p>

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<p style="text-align: right;">Page 238</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you believe it's possible</p> <p>3 that they went to that extent because of</p> <p>4 their concerns about trying to restrict</p> <p>5 supply through the use of the UEP Certified</p> <p>6 Program guidelines?</p> <p>7 MS. ANDERSON: Objection.</p> <p>8 MS. LEVINE: Objection to form.</p> <p>9 Leading. Mischaracterizes. It's</p> <p>10 hypothetical.</p> <p>11 THE WITNESS: I don't know what</p> <p>12 they were thinking, so I don't know.</p> <p>13 BY MR. PIZZIRUSSO:</p> <p>14 Q. You, yourself, expressed that</p> <p>15 you had some suspicions about that although</p> <p>16 you never mentioned them directly. Is that</p> <p>17 right?</p> <p>18 A. That's correct.</p> <p>19 MS. LEVINE: Object to the form.</p> <p>20 Leading your own witness.</p> <p>21 BY MR. PIZZIRUSSO:</p> <p>22 Q. And you've seen -- we went</p> <p>23 through a document that Sparboe sent to UEP</p> <p>24 about the same kinds of concerns.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 240</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 irrelevant based on the documentation</p> <p>3 that's already published.</p> <p>4 BY MR. PIZZIRUSSO:</p> <p>5 Q. I'm just trying to understand</p> <p>6 if you think there might be something more</p> <p>7 than just their concern about a competing</p> <p>8 program that might have motivated their</p> <p>9 extreme reaction to your competing program?</p> <p>10 MS. LEVINE: Objection to form.</p> <p>11 Misleading. Mischaracterizes this</p> <p>12 witness. Calls for speculation.</p> <p>13 Asked and answered. I think the</p> <p>14 witness now has answered your attempt</p> <p>15 four times.</p> <p>16 THE WITNESS: Are you asking my</p> <p>17 opinion?</p> <p>18 BY MR. PIZZIRUSSO:</p> <p>19 Q. Yes.</p> <p>20 A. I think UEP since 2004 has been</p> <p>21 misguided. And in their attempt to control</p> <p>22 the industry, they would take whatever steps</p> <p>23 necessary to stop any competition or prevent</p> <p>24 them from achieving that control.</p> <p>25 Q. Do you believe that one of the</p>
<p style="text-align: right;">Page 239</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MR. MCKENNEY: Objection to</p> <p>3 form.</p> <p>4 BY MR. PIZZIRUSSO:</p> <p>5 Q. Do you think it's possible that</p> <p>6 the reason the UEP was so adamant about your</p> <p>7 competing program was because of their</p> <p>8 concerns about supply control restriction?</p> <p>9 MS. LEVINE: Objection to form.</p> <p>10 MR. MCKENNEY: Objection to</p> <p>11 form.</p> <p>12 MS. LEVINE: Hypothetical.</p> <p>13 Misleading. Mischaracterizes what</p> <p>14 this witness just testified to.</p> <p>15 MR. MCKENNEY: Calls for</p> <p>16 speculation.</p> <p>17 MS. LEVINE: Asked and answered.</p> <p>18 THE WITNESS: In 2008 there was</p> <p>19 a published article in Egg Industry</p> <p>20 Magazine that discussed that this</p> <p>21 program led to reduction in space --</p> <p>22 or supplies and increase in price as a</p> <p>23 direct result of UEP Certified</p> <p>24 Program. Whether I thought they did</p> <p>25 that intentional or not, I think is</p>	<p style="text-align: right;">Page 241</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 reasons that they would want that control is</p> <p>3 to ensure that egg prices remained high for</p> <p>4 the industry?</p> <p>5 MS. LEVINE: Objection to form.</p> <p>6 Hypothetical. Asked and answered.</p> <p>7 Leading your own witness.</p> <p>8 THE WITNESS: I believe that</p> <p>9 we've seen documentation where Chad</p> <p>10 Gregory indicated to Sparboe Farms</p> <p>11 that they have done a lot of good for</p> <p>12 Sparboe Farms by helping to increase</p> <p>13 the prices. And that was achieved by</p> <p>14 the programs they put into place.</p> <p>15 Maybe it's a leap between where we're</p> <p>16 at and where you're looking to go, but</p> <p>17 I think that this is very leading, all</p> <p>18 this documentation, to suggest that</p> <p>19 very thing.</p> <p>20 MR. PIZZIRUSSO: I want to take</p> <p>21 a quick break and see if I have</p> <p>22 anything else. I might be able to</p> <p>23 wrap it up.</p> <p>24 VIDEOGRAPHER: Off the record.</p> <p>25 3:58.</p>

<p style="text-align: right;">Page 242</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (A recess was taken.)</p> <p>4 - - -</p> <p>5 VIDEOGRAPHER: We are on record.</p> <p>6 4:08 p.m. This is the beginning of</p> <p>7 tape number six.</p> <p>8 - - -</p> <p>9 EXAMINATION</p> <p>10 - - -</p> <p>11 BY MR. BROWN:</p> <p>12 Q. Good afternoon, sir. My name</p> <p>13 is Stephen Brown. I'm representing Direct</p> <p>14 Action Plaintiffs, Kraft, Kellogg, General</p> <p>15 Mills and Nestle. I'm going to be continuing</p> <p>16 with some questions. Hopefully we won't go</p> <p>17 over too much of what we've already talked</p> <p>18 about today and I'll try to keep it brief.</p> <p>19 So thank you for your patience.</p> <p>20 We talked a little bit earlier</p> <p>21 this morning and this afternoon about when</p> <p>22 you left UEP. Do you recall when that was?</p> <p>23 A. August 2004.</p> <p>24 Q. And after you left UEP, did you</p> <p>25 start consulting for egg producers?</p>	<p style="text-align: right;">Page 244</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 or they thought I could stop that from</p> <p>3 happening. And so I developed a strategy in</p> <p>4 which we did meet with people in Washington,</p> <p>5 D.C. within the federal government and</p> <p>6 members of Congress, and we were successful</p> <p>7 in stopping that from taking place.</p> <p>8 Q. Was that the only activity that</p> <p>9 you engaged in as a consultant for Michael</p> <p>10 Foods and Sparboe Farms?</p> <p>11 A. No.</p> <p>12 Q. What else -- what other kinds</p> <p>13 of activities?</p> <p>14 A. The meeting that led up to that</p> <p>15 meeting on October 30th where we had all</p> <p>16 those companies come to Chicago, Michael</p> <p>17 Foods and Sparboe both, following that</p> <p>18 meeting, asked me, along with many other</p> <p>19 companies, to start the process of developing</p> <p>20 a Process Verified Program to compete with</p> <p>21 UEP Certified Program.</p> <p>22 Q. Let me show you what will be</p> <p>23 marked as Exhibit Klippen-55.</p> <p>24 - - -</p> <p>25 (Exhibit Klippen-55, E-mail</p>
<p style="text-align: right;">Page 243</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. No. It was much later.</p> <p>3 Q. Okay. And when you say "much</p> <p>4 later," what time period are you referring</p> <p>5 to?</p> <p>6 A. It was probably into 2005</p> <p>7 before I started again.</p> <p>8 Q. And in 2005, did you start</p> <p>9 consulting for Michael Foods?</p> <p>10 A. I did.</p> <p>11 Q. What about Sparboe Farms?</p> <p>12 A. Yes, I did.</p> <p>13 Q. Any other companies?</p> <p>14 A. Those are the first two that I</p> <p>15 started consulting for.</p> <p>16 Q. What did you do as a consultant</p> <p>17 generally for those two companies?</p> <p>18 A. Both companies came to me,</p> <p>19 explained that monies that they were paying</p> <p>20 into the American Egg Board checkoff, that</p> <p>21 there was a movement or a proposal by Gene</p> <p>22 Gregory at UEP that \$2 million per year would</p> <p>23 be siphoned off of the American Egg Board</p> <p>24 checkoff funds and used to promote the UEP</p> <p>25 Certified Program. They asked if I thought</p>	<p style="text-align: right;">Page 245</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 chain, Bates MFI0118413 &amp; MFI0118414,</p> <p>3 was marked for identification.)</p> <p>4 - - -</p> <p>5 BY MR. BROWN:</p> <p>6 Q. And this is highly</p> <p>7 confidential, so I'm going to show it to</p> <p>8 defense counsel first. We might be low on</p> <p>9 copies.</p> <p>10 This is MFI0118413. I'm going</p> <p>11 to hand this to Mr. Klippen.</p> <p>12 Is this e-mail correspondence</p> <p>13 between you and Mr. Toby Catherman?</p> <p>14 A. Yes.</p> <p>15 Q. And who is Mr. Catherman again?</p> <p>16 A. He was with Michael Foods. He</p> <p>17 lived in Pennsylvania. He has since retired.</p> <p>18 Q. If you turn to the page that</p> <p>19 ends in 8414, the next page, the third bullet</p> <p>20 from the bottom. It says, "Forcing</p> <p>21 compliance by industry through promotional</p> <p>22 efforts to retailers is objectionable."</p> <p>23 What did you mean by that?</p> <p>24 A. That using funds from the</p> <p>25 checkoff that the entire industry pays into</p>

<p style="text-align: right;">Page 246</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 to have retailers insist on buying only those</p> <p>3 eggs was a practice that I objected to.</p> <p>4 Q. Was that something that was</p> <p>5 occurring at that time?</p> <p>6 A. Yes.</p> <p>7 Q. Was that UEP that was</p> <p>8 attempting or was forcing compliance through</p> <p>9 promotional efforts to retailers?</p> <p>10 MR. MCKENNEY: Objection to</p> <p>11 form.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. BROWN:</p> <p>14 Q. The next -- same bullet, next</p> <p>15 sentence, "Never should an industry</p> <p>16 association contact customers about</p> <p>17 producers' practices."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Is that something that was</p> <p>21 occurring at the time?</p> <p>22 A. Yes.</p> <p>23 MR. MCKENNEY: Objection to</p> <p>24 form.</p> <p>25 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 248</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 objected to anything that was in this e-mail</p> <p>3 correspondence?</p> <p>4 MS. ANDERSON: Same objection.</p> <p>5 Asked and answered.</p> <p>6 THE WITNESS: I had many</p> <p>7 conversations with Toby Catherman,</p> <p>8 he's a friend. I don't recall him</p> <p>9 objecting to any of this.</p> <p>10 BY MR. BROWN:</p> <p>11 Q. I am going to hand to you what</p> <p>12 will be marked as Klippen-56.</p> <p>13 - - -</p> <p>14 (Exhibit Klippen-56, E-mail</p> <p>15 chain, Bates MFI0002727 &amp; MFI0002728,</p> <p>16 was marked for identification.)</p> <p>17 - - -</p> <p>18 BY MR. BROWN:</p> <p>19 Q. This is MFI0002727. And</p> <p>20 this -- let's see, there's a reference to a</p> <p>21 "White Paper on 100% or Phase-In Purchase</p> <p>22 Requirement."</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. And this is an e-mail that you</p>
<p style="text-align: right;">Page 247</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. BROWN:</p> <p>3 Q. And who was contacting</p> <p>4 customers about producers' practices?</p> <p>5 A. UEP was contacting Wal-Mart</p> <p>6 about Sparboe's production practices through</p> <p>7 the Process Verified Program that we were</p> <p>8 developing. UEP contacted the Canadians.</p> <p>9 And both instances they were trying to</p> <p>10 dissuade those customers from purchasing</p> <p>11 Sparboe eggs because they were not UEP</p> <p>12 certified.</p> <p>13 Q. And you sent this to Mr.</p> <p>14 Catherman. Correct?</p> <p>15 A. Yes.</p> <p>16 Q. Did you have any subsequent</p> <p>17 conversations with Mr. Catherman where he</p> <p>18 objected to anything that was in this e-mail</p> <p>19 correspondence?</p> <p>20 MS. ANDERSON: Object to the</p> <p>21 form of the question.</p> <p>22 THE WITNESS: No.</p> <p>23 BY MR. BROWN:</p> <p>24 Q. What about any other kind of</p> <p>25 communication from Mr. Catherman where he</p>	<p style="text-align: right;">Page 249</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 wrote October 6, 2006, to a number of</p> <p>3 recipients, one of which is Mr. Toby</p> <p>4 Catherman. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see there's this</p> <p>7 paragraph that starts, "What has evolved?"</p> <p>8 A. Yes.</p> <p>9 Q. Will you take a minute to</p> <p>10 review that, and also the paragraph below it,</p> <p>11 please.</p> <p>12 A. [Reviewing document.] Okay.</p> <p>13 Q. So in those two paragraphs</p> <p>14 after the heading "What has evolved," is it</p> <p>15 correct that you are describing what has</p> <p>16 happened with the UEP Certified Program prior</p> <p>17 to the date on which you sent this e-mail,</p> <p>18 October 6, 2006?</p> <p>19 A. Yes.</p> <p>20 Q. Do you see where it says,</p> <p>21 "Initially, the guidelines were voluntary for</p> <p>22 producers who soon benefited from increased</p> <p>23 prices as increases in cage density reduced</p> <p>24 supplies."</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 250</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. In the next paragraph it says,</p> <p>4 second sentence of that last paragraph on</p> <p>5 this page, The UEP Animal Welfare Committee</p> <p>6 sought 100% compliance by any participants</p> <p>7 under the pretense this would signal a higher</p> <p>8 degree of "welfare" and it was, quote --</p> <p>9 excuse me, and it was the "right thing to</p> <p>10 do." Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Why did you put those two</p> <p>13 phrases in quotations?</p> <p>14 A. Because the industry was going</p> <p>15 along with the concept that they were not</p> <p>16 providing welfare in the way they had been</p> <p>17 producing their eggs, and that it was</p> <p>18 absolutely necessary and the right thing to</p> <p>19 do to become part of the UEP Certified</p> <p>20 Program. My contention was we had been</p> <p>21 developing animal husbandry practices that</p> <p>22 were welfare compliant. So this terminology</p> <p>23 of welfare and the right thing to do was</p> <p>24 misleading.</p> <p>25 Q. The last sentence of that</p>	<p style="text-align: right;">Page 252</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 would have followed through and done it.</p> <p>3 Q. When Mr. Catherman says, "...we</p> <p>4 had Ken send it to the following," did Mr.</p> <p>5 Catherman approve your sending this e-mail</p> <p>6 out to that -- each of those recipients?</p> <p>7 A. Yes.</p> <p>8 Q. In any subsequent conversations</p> <p>9 or communications, did Mr. Catherman object</p> <p>10 to anything that you had written in this</p> <p>11 e-mail?</p> <p>12 A. No.</p> <p>13 Q. You can move off of that one.</p> <p>14 Do you know who Rich Hall is?</p> <p>15 A. I do.</p> <p>16 Q. Who is Rich Hall?</p> <p>17 A. Rich Hall is a farmer in</p> <p>18 southern Iowa that also has smaller egg</p> <p>19 farmers working with him. So it's -- I</p> <p>20 believe it's a cooperative.</p> <p>21 Q. I'm going to hand to you what</p> <p>22 will be marked as Exhibit Klippen-57.</p> <p>23 - - -</p> <p>24 (Exhibit Klippen-57, E-mail</p> <p>25 chain, Bates SF118875 &amp; SF118876, was</p>
<p style="text-align: right;">Page 251</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 paragraph, "The Certified Program evolved</p> <p>3 into a marketing structure dictating how and</p> <p>4 to whom UEP members marketed their product."</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Okay. Now, the top e-mail in</p> <p>8 this chain is an e-mail from Mr. Catherman to</p> <p>9 Vince O'Brien, Tim Bebee, Terry Baker and</p> <p>10 Lowell Ostrand. Is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. And Mr. Catherman writes, "FYI,</p> <p>13 we had Ken send it to the following."</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. He continues, "I did ok him to</p> <p>17 send it to the Sparboe group under a separate</p> <p>18 cover to keep them in the loop."</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Did you send this to the</p> <p>22 Sparboe group?</p> <p>23 A. I can't recall actually sending</p> <p>24 this to the Sparboe group, but had Toby said</p> <p>25 it's okay for me to go ahead and do that, I</p>	<p style="text-align: right;">Page 253</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 marked for identification.)</p> <p>3 - - -</p> <p>4 BY MR. BROWN:</p> <p>5 Q. This is SF118875. At the top</p> <p>6 of the document this is an e-mail from</p> <p>7 Mr. Hall to you and Mark Friedow. Is that</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Subject "Freedom of Information</p> <p>11 Act request filed by UEP."</p> <p>12 Is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. Second to the last paragraph of</p> <p>15 this e-mail, Mr. Hall writes, "I think it</p> <p>16 takes a lot of nerve to start pointing</p> <p>17 fingers when everyone knows that the UEP</p> <p>18 program has lacked integrity."</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. What did you understand</p> <p>22 Mr. Hall to be referring to when he wrote</p> <p>23 that?</p> <p>24 MR. MCKENNEY: Objection to</p> <p>25 form. Calls for speculation.</p>

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<p style="text-align: right;">Page 254</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I think the</p> <p>3 preceding paragraph provided some</p> <p>4 insight into what Mr. Hall's thinking</p> <p>5 was. We talked about them suspending</p> <p>6 their auditing process due to a high</p> <p>7 failure rate through USDA. He wanted</p> <p>8 to know what farms had failed the</p> <p>9 audits and how the process could be</p> <p>10 used to keep their eggs out of the</p> <p>11 system. So he was questioning their</p> <p>12 tactics. And he also expressed</p> <p>13 concerns that I not do like Chad and</p> <p>14 forward my thoughts to Gene or others</p> <p>15 which is, as we've seen, something</p> <p>16 they've been doing. He wanted to</p> <p>17 remain anonymous.</p> <p>18 BY MR. BROWN:</p> <p>19 Q. Were questions about the</p> <p>20 integrity of the UEP program widely shared</p> <p>21 within the industry?</p> <p>22 MS. LEVINE: Objection to form.</p> <p>23 MR. MCKENNEY: Objection to</p> <p>24 form. Lacks foundation. Calls for</p> <p>25 speculation.</p>	<p style="text-align: right;">Page 256</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 characterized as inhumane toward the poultry</p> <p>3 and less they are part of the UEP Certified</p> <p>4 Program. We've seen in the documents that</p> <p>5 that's implied by some of the comments made</p> <p>6 by either Chad or by Gene. That was</p> <p>7 frustrating for them, that was frustrating</p> <p>8 for me who had spent the years in college</p> <p>9 studying production practices and knowing</p> <p>10 what goes on at the farms. So much of the</p> <p>11 frustration was how the industry was being</p> <p>12 channeled or directed when they felt that</p> <p>13 they had all along been doing their very best</p> <p>14 as poultrymen in handling the husbandry of</p> <p>15 their flocks.</p> <p>16 Q. And in that immediately</p> <p>17 preceding paragraph, there's a reference to</p> <p>18 -- Mr. Hall writes, "We know they had</p> <p>19 suspended their auditing process due to a</p> <p>20 high failure rate through USDA."</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Do you know when that occurred?</p> <p>24 MS. LEVINE: Object to the form.</p> <p>25 Lacks foundation.</p>
<p style="text-align: right;">Page 255</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Leading.</p> <p>3 THE WITNESS: The egg industry</p> <p>4 is a small industry in terms of</p> <p>5 numbers of people involved. So</p> <p>6 conversations at meetings in the</p> <p>7 hallways always took place. I was</p> <p>8 privy to people coming to me and</p> <p>9 expressing their frustration over the</p> <p>10 UEP Certified Program and some of</p> <p>11 the -- some of their feelings as it</p> <p>12 relates to the integrity of the</p> <p>13 program. So yes.</p> <p>14 BY MR. BROWN:</p> <p>15 Q. When people came to you, other</p> <p>16 than what's reflected in this proceeding</p> <p>17 paragraph, do you recall other frustrations</p> <p>18 that were expressed to you?</p> <p>19 A. Such as?</p> <p>20 Q. I'm just asking if you recall</p> <p>21 any others?</p> <p>22 A. Specific frustrations?</p> <p>23 Q. Yes.</p> <p>24 A. Like me, I think that some</p> <p>25 farmers were frustrated that they were being</p>	<p style="text-align: right;">Page 257</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I do not remember</p> <p>3 when that occurred. But that would be</p> <p>4 part of the frustration that they felt</p> <p>5 because I did know that there were</p> <p>6 people who were failing, and that was</p> <p>7 frustrating for them.</p> <p>8 BY MR. BROWN:</p> <p>9 Q. Do you know whether the</p> <p>10 auditing process was suspended because of a</p> <p>11 high failure rate?</p> <p>12 MS. LEVINE: Object to the form.</p> <p>13 Lacks foundation.</p> <p>14 THE WITNESS: No, it was not</p> <p>15 suspended. The auditing process with</p> <p>16 the failure rate through USDA, they</p> <p>17 found another auditing firm that was</p> <p>18 not part of the federal government</p> <p>19 that would go out and inspect the</p> <p>20 facilities.</p> <p>21 BY MR. BROWN:</p> <p>22 Q. But not -- but they ceased to</p> <p>23 use -- excuse me.</p> <p>24 So did UEP cease using USDA as</p> <p>25 an auditor?</p>

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<p style="text-align: right;">Page 258</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: Object to the form.</p> <p>3 THE WITNESS: I don't think they</p> <p>4 completely ceased. I think that where</p> <p>5 farms were having difficulties, they</p> <p>6 may have sought another auditing firm</p> <p>7 to come out and inspect the facilities</p> <p>8 instead of using USDA officials.</p> <p>9 BY MR. BROWN:</p> <p>10 Q. I'm going to hand to you what</p> <p>11 will be marked as Exhibit Klippen-58.</p> <p>12 - - -</p> <p>13 (Exhibit Klippen-58, E-mail</p> <p>14 chain, Bates SF058477 &amp; SF058478, was</p> <p>15 marked for identification.)</p> <p>16 - - -</p> <p>17 BY MR. BROWN:</p> <p>18 Q. This is SF058477. This is a</p> <p>19 highly confidential document.</p> <p>20 MS. LEVINE: Give me a minute.</p> <p>21 MS. ANDERSON: Troy, it's yours.</p> <p>22 MR. PIZZIRUSSO: Troy over</p> <p>23 designated.</p> <p>24 MR. HUTCHINSON: For the record,</p> <p>25 this is a parent document. It appears</p>	<p style="text-align: right;">Page 260</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MS. LEVINE: It's highly</p> <p>3 confidential, so...</p> <p>4 MS. ANDERSON: I think you</p> <p>5 should lay some groundwork and then it</p> <p>6 won't be an issue.</p> <p>7 MR. BROWN: It's written by</p> <p>8 Mr. --</p> <p>9 MR. HUTCHINSON: There's your</p> <p>10 groundwork.</p> <p>11 MR. BROWN: Well, I -- I mean, I</p> <p>12 need to show it to him to confirm that</p> <p>13 he wrote it, so do you have any</p> <p>14 objection to my showing it to him?</p> <p>15 MR. HUTCHINSON: No.</p> <p>16 BY MR. BROWN:</p> <p>17 Q. Sir, does this appear to be an</p> <p>18 e-mail that you wrote September 26, 2008?</p> <p>19 A. It does.</p> <p>20 Q. And this is from you to</p> <p>21 Dr. Hugo Medina. Is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And the subject line of the</p> <p>24 e-mail is "The UEP Certified is Also</p> <p>25 Suspect."</p>
<p style="text-align: right;">Page 259</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 that there were several attachments to</p> <p>3 it that are not included in the</p> <p>4 exhibit.</p> <p>5 MR. PIZZIRUSSO: Are you</p> <p>6 referring to the image GIFs?</p> <p>7 MR. HUTCHINSON: There's</p> <p>8 something -- there are four things</p> <p>9 listed in the attachments. I don't</p> <p>10 know what those are.</p> <p>11 MR. BROWN: Do you have any</p> <p>12 objection to my showing the document</p> <p>13 to the witness?</p> <p>14 MR. HUTCHINSON: We do --</p> <p>15 Sparboe does not waive its</p> <p>16 confidentiality designations to either</p> <p>17 this exhibit or any other exhibit.</p> <p>18 MR. BROWN: Do you have any</p> <p>19 objection to my showing the document</p> <p>20 to the witness?</p> <p>21 MR. HUTCHINSON: Has the witness</p> <p>22 complied with the terms of the</p> <p>23 protective order?</p> <p>24 MR. BROWN: I believe we marked</p> <p>25 it as an exhibit.</p>	<p style="text-align: right;">Page 261</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. You may have said this earlier</p> <p>5 today. Who is Dr. Medina?</p> <p>6 A. Dr. Hugo Medina was the</p> <p>7 veterinarian that was on the staff for</p> <p>8 Sparboe Farms. There's only about five</p> <p>9 veterinarians in the country that work for</p> <p>10 egg farms. He was one. He died about two</p> <p>11 years ago from cancer, throat cancer.</p> <p>12 Q. And now, in this e-mail --</p> <p>13 well, it appears that you're forwarding an</p> <p>14 article on to Dr. Medina. Is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And you write in your e-mail,</p> <p>17 "Notice in this article that the UEP animal</p> <p>18 welfare program is also suspect in this</p> <p>19 price-fixing scheme."</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Why were you bringing that to</p> <p>23 Mr. -- excuse me, Dr. Medina's attention?</p> <p>24 A. I do not recall why I brought</p> <p>25 it to his attention.</p>

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<p style="text-align: right;">Page 262</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you recall any discussions</p> <p>3 with Dr. Medina regarding this article?</p> <p>4 A. I recall Dr. Medina being</p> <p>5 prepared to give a presentation at a</p> <p>6 conference. I did attend the conference. I</p> <p>7 sat next to him. But as I recall, his</p> <p>8 presentation was not about the UEP animal</p> <p>9 welfare program. This might have been</p> <p>10 another conference he was attending that I</p> <p>11 was not at. But as I've already stated, I</p> <p>12 don't recall the reasons why -- there was a</p> <p>13 reason I shared this with him. And all this</p> <p>14 is copied from that article. These are not</p> <p>15 my statements. These are copied from the</p> <p>16 article. But I was sharing -- there must</p> <p>17 have been some reason I was sharing with Dr.</p> <p>18 Medina, but I don't recall what it was.</p> <p>19 Q. I'm going to hand to you what</p> <p>20 will be marked as Exhibit Klippen-59.</p> <p>21 - - -</p> <p>22 (Exhibit Klippen-59, E-mail</p> <p>23 chain, Bates SF081426 &amp; SF081427, was</p> <p>24 marked for identification.)</p> <p>25 - - -</p>	<p style="text-align: right;">Page 264</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the highlighted portion of this release."</p> <p>3 Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know -- I don't see --</p> <p>6 when I look at this document, I don't see any</p> <p>7 highlighting. Do you recall what you --</p> <p>8 well, please take a look and confirm that</p> <p>9 that's correct. Do you see any highlighting</p> <p>10 in that document?</p> <p>11 A. There is none.</p> <p>12 Q. Do you recall what you had</p> <p>13 highlighted?</p> <p>14 MS. ANDERSON: Object to the</p> <p>15 form of the question.</p> <p>16 THE WITNESS: I do not recall</p> <p>17 specifically what I highlighted. I</p> <p>18 believe, just perusing the document,</p> <p>19 you can just -- there's a number of</p> <p>20 statements that would be -- that would</p> <p>21 catch anyone's eye as they read</p> <p>22 through this document and recognized</p> <p>23 that troubles were getting worse for</p> <p>24 this marketing cooperative.</p> <p>25 BY MR. BROWN:</p>
<p style="text-align: right;">Page 263</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. BROWN:</p> <p>3 Q. This is SF081426. This is</p> <p>4 another highly confidential document.</p> <p>5 Mr. Klippen, does this appear</p> <p>6 to be an e-mail you wrote on September 26,</p> <p>7 2008?</p> <p>8 A. Yes.</p> <p>9 Q. And you wrote -- UE -- excuse</p> <p>10 me.</p> <p>11 You wrote this to Beth Schnell</p> <p>12 and Wayne Carlson. Who is Beth Schnell?</p> <p>13 A. She is the owner of Sparboe</p> <p>14 Farms. Wayne Carlson is like her second in</p> <p>15 command.</p> <p>16 Q. And then it looks like you</p> <p>17 forwarded your own e-mail to Lee Regensburger</p> <p>18 and Alan Andrews. Is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. And the subject of this e-mail</p> <p>21 is, "UEP's troubles getting worse."</p> <p>22 A. Correct.</p> <p>23 Q. You wrote, "UEP's troubles are</p> <p>24 only getting worse. The second class-action</p> <p>25 lawsuit filed on price-fixing. Please note</p>	<p style="text-align: right;">Page 265</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Why were you bringing this to</p> <p>3 the attention of Beth Schnell and Wayne</p> <p>4 Carlson?</p> <p>5 A. I was working for Sparboe at</p> <p>6 the time. It was something that I came</p> <p>7 across in some of my research. I copied it</p> <p>8 and sent it forward.</p> <p>9 Q. So I didn't ask this before.</p> <p>10 Lee Regensburger and Alan Andrews?</p> <p>11 A. Lee Regensburger was vice</p> <p>12 president of sales. Alan Andrews was vice</p> <p>13 president of marketing. Both of them were --</p> <p>14 this was an internal document within Sparboe.</p> <p>15 Q. I am going to hand to you what</p> <p>16 will be marked as Exhibit Klippen-60.</p> <p>17 - - -</p> <p>18 (Exhibit Klippen-60, E-mail</p> <p>19 chain, Bates SF110893 &amp; SF110894, was</p> <p>20 marked for identification.)</p> <p>21 - - -</p> <p>22 BY MR. BROWN:</p> <p>23 Q. This is SF110893. This is a</p> <p>24 highly confidential document. Mr. Klippen,</p> <p>25 does this appear to be an e-mail that you</p>

<p style="text-align: right;">Page 266</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 wrote October 13, 2008?</p> <p>3 A. Yes.</p> <p>4 Q. You write, "I have often</p> <p>5 wondered how the industry allowed Gene to</p> <p>6 'issue marching orders' as to how they will</p> <p>7 produce eggs."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Was it your understanding at</p> <p>11 this time that Mr. Gregory had -- well,</p> <p>12 withdrawn.</p> <p>13 What did you mean when you</p> <p>14 wrote "'issue marching orders'"?</p> <p>15 A. His UEP Certified Program was</p> <p>16 directed to the industry as if they had no</p> <p>17 choice but to be in compliance, otherwise,</p> <p>18 there would be penalties associated with</p> <p>19 non-compliance.</p> <p>20 Q. The next sentence, "His means</p> <p>21 of intimidation to get people 'in step' by</p> <p>22 contacting their customers or shouting them</p> <p>23 down at meetings just makes me shake my head</p> <p>24 in disbelief."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 268</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Paul Novak. I represent the Indirect</p> <p>3 Purchaser Plaintiffs.</p> <p>4 We've had marked Deposition</p> <p>5 Exhibit 61. I know you've had an opportunity</p> <p>6 to review it for a moment. The body of the</p> <p>7 document other than the -- some of the title</p> <p>8 information at the very top, but it appears</p> <p>9 to be an e-mail that you wrote to a number of</p> <p>10 people on February 12, 2007. Can you verify</p> <p>11 for me that this is indeed an e-mail that you</p> <p>12 wrote at that time?</p> <p>13 A. It is.</p> <p>14 Q. Just for the record, I'll</p> <p>15 indicated that Exhibit 61 is marked with the</p> <p>16 Bates page number MFI0023367 through 68. And</p> <p>17 the particular portion of the document,</p> <p>18 Mr. Klippen, that I wanted to direct your</p> <p>19 attention is the paragraph you wrote</p> <p>20 regarding the Scientific Committee. It makes</p> <p>21 reference to payments that are made to the</p> <p>22 Scientific Advisory Committee for the UEP.</p> <p>23 First of all, who were or who</p> <p>24 was the -- who were the members that</p> <p>25 comprised the UEP Scientific Advisory</p>
<p style="text-align: right;">Page 267</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I do.</p> <p>3 Q. The reference to "his," are you</p> <p>4 referring to Gene Gregory there?</p> <p>5 A. Yes.</p> <p>6 MR. BROWN: I would like to take</p> <p>7 a quick break, but I think that I'm</p> <p>8 done. If we could go off the record</p> <p>9 for just a couple of minutes.</p> <p>10 VIDEOGRAPHER: Off the record.</p> <p>11 4:41.</p> <p>12 - - -</p> <p>13 (A recess was taken.)</p> <p>14 - - -</p> <p>15 VIDEOGRAPHER: On the record.</p> <p>16 4:54.</p> <p>17 - - -</p> <p>18 (Exhibit Klippen-61, 2/12/07</p> <p>19 E-mail, Bates MFI0023387 &amp; MFI002388,</p> <p>20 was marked for identification.)</p> <p>21 - - -</p> <p>22 EXAMINATION</p> <p>23 - - -</p> <p>24 BY MR. NOVAK:</p> <p>25 Q. Good afternoon. My name is</p>	<p style="text-align: right;">Page 269</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Committee, if you know?</p> <p>3 A. Dr. Jeff Armstrong was the</p> <p>4 chairman, he was at Michigan State. Joy</p> <p>5 Mench, whose name has already come up, she</p> <p>6 was out at the University of California, I</p> <p>7 believe at Davis. There was Scotti Hester, I</p> <p>8 think she was at Purdue. There was Janice</p> <p>9 Swanson. And at that time I think she was</p> <p>10 Kansas, she did go to Michigan State. Don</p> <p>11 Bell was from California, he was not a</p> <p>12 scientist, but he was a long time consultant</p> <p>13 to the industry. Off the top of my head,</p> <p>14 that's all I can recall at the moment. I</p> <p>15 think there might have been one or two more.</p> <p>16 Q. And your understanding is that</p> <p>17 UEP actually gave year end gifts of \$1,000 to</p> <p>18 each of the members of that Scientific</p> <p>19 Advisory Committee?</p> <p>20 MR. MCKENNEY: Objection to</p> <p>21 form. Lacks foundation. Calls for</p> <p>22 speculation.</p> <p>23 THE WITNESS: That was provided</p> <p>24 to me by the scientists that I had</p> <p>25 used. They were aware that there was</p>

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<p style="text-align: right;">Page 270</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 a gift donation to each scientist by</p> <p>3 Gene Gregory at UEP.</p> <p>4 BY MR. NOVAK:</p> <p>5 Q. And who was it that provided</p> <p>6 that information to you?</p> <p>7 A. I can't recall which of the</p> <p>8 three scientists I was using actually stated</p> <p>9 that. So I don't remember off the top of my</p> <p>10 head. But one of the scientists made that</p> <p>11 reference.</p> <p>12 Q. Maybe you made reference to it</p> <p>13 in earlier deposition testimony, but I don't</p> <p>14 recall. Who were the members of the</p> <p>15 Scientific Advisory Committee that you formed</p> <p>16 for purposes of formulating your animal</p> <p>17 welfare program?</p> <p>18 A. There was Dr. Ken Koelkebeck</p> <p>19 from the University of Illinois. He's a</p> <p>20 poultry scientist with extensive background</p> <p>21 in poultry production. There was Dr. Kenneth</p> <p>22 Anderson from North Carolina State University</p> <p>23 who is extensively published in animal</p> <p>24 welfare and layer hens. And then there was</p> <p>25 Tony Cobarrubia, and he's at the University</p>	<p style="text-align: right;">Page 272</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 scientist directly.</p> <p>3 - - -</p> <p>4 (Exhibit Klippen-62, The Egg</p> <p>5 Newsletter January 15, 2007, Bates</p> <p>6 MFI0067366 - MFI0057375, was marked</p> <p>7 for identification.)</p> <p>8 - - -</p> <p>9 BY MR. NOVAK:</p> <p>10 Q. Now, we've had marked for</p> <p>11 identification purposes Deposition Exhibit 62</p> <p>12 which is a document entitled "The Egg</p> <p>13 Newsletter," dated January 15, 2007, Bates</p> <p>14 page numbers MFI0067366 through 375. And the</p> <p>15 questions that I'll ask you with respect to</p> <p>16 Deposition Exhibit 62 are primarily related</p> <p>17 to the first page of the document.</p> <p>18 Mr. Klippen, is this a document that you</p> <p>19 would have authored?</p> <p>20 A. Yes.</p> <p>21 Q. And do you recognize it as an</p> <p>22 accurate copy of a document that you lead</p> <p>23 authored in or around January 15 of 2007?</p> <p>24 A. It appears to be so, yes.</p> <p>25 Q. On the first page of Deposition</p>
<p style="text-align: right;">Page 271</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 of Kentucky. He and I went to school</p> <p>3 together at Michigan State University, and he</p> <p>4 has a Ph.D. in poultry science and extensive</p> <p>5 background in poultry production.</p> <p>6 Q. One of the decisions that you</p> <p>7 made in establishing this alternative animal</p> <p>8 welfare PVP program is that you would not</p> <p>9 provide gifts or direct monetary</p> <p>10 contributions to the members of your</p> <p>11 Scientific Advisory Committee?</p> <p>12 MS. LEVINE: Objection to form</p> <p>13 of the question. Lacks foundation.</p> <p>14 MR. MCKENNEY: Objection.</p> <p>15 Leading.</p> <p>16 THE WITNESS: Whenever you have</p> <p>17 a group of scientists that are doing a</p> <p>18 project for you, they recognize that</p> <p>19 they become suspect if they're funded</p> <p>20 directly. They have no objection to</p> <p>21 donations or grants given to the</p> <p>22 university. And I did that, I made</p> <p>23 donations to each one of those</p> <p>24 universities, but I did not make a</p> <p>25 financial contribution to the</p>	<p style="text-align: right;">Page 273</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Exhibit 62, you make reference to the "New</p> <p>3 Animal Welfare Program Will Protect</p> <p>4 Conventional Production Systems."</p> <p>5 Do you see that portion of</p> <p>6 Deposition Exhibit 62?</p> <p>7 A. I do.</p> <p>8 Q. And the second paragraph within</p> <p>9 that portion of the exhibit reads as follows:</p> <p>10 "What do most consumers want? Low prices.</p> <p>11 Economically-priced eggs come from production</p> <p>12 facilities that manage the economies of the</p> <p>13 system. How can one production system</p> <p>14 capture the additional costs of production</p> <p>15 under a welfare system? Plain and simple.</p> <p>16 Under one system the producer will end up</p> <p>17 paying more for eggs produced under that</p> <p>18 system. Our new comprehensive plan allows</p> <p>19 for choices by the customers, and with those</p> <p>20 enhanced specifications in the choices the</p> <p>21 customer can pay the additional costs."</p> <p>22 You authored that paragraph?</p> <p>23 A. I did.</p> <p>24 Q. Can you describe for me in more</p> <p>25 detail what you meant in the paragraph that</p>

<p style="text-align: right;">Page 274</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 you wrote there?</p> <p>3 A. Yes. I think there are some</p> <p>4 other documentation that also refers to this</p> <p>5 that we've also touched on earlier. If you</p> <p>6 have one program where you have 100 percent</p> <p>7 that are in compliance or 100 percent of the</p> <p>8 eggs being produced under that one set of</p> <p>9 documents, well, then you have basically made</p> <p>10 that a commodity as opposed to a specialty</p> <p>11 product. When UEP was implementing its UEP</p> <p>12 Certified Program, it became more of a</p> <p>13 commodity and the producers ended up</p> <p>14 absorbing the cost to implement that program</p> <p>15 as opposed to differentiating your systems.</p> <p>16 Egg production today, you may have farmers</p> <p>17 offering organic eggs, it costs more to</p> <p>18 produce those eggs. You can label that as</p> <p>19 organic if you follow all the guidelines, but</p> <p>20 then you would hope to get compensation for</p> <p>21 that additional cost from your customers. If</p> <p>22 you make this all one commodity, if all the</p> <p>23 eggs sold, whether they are organic, UEP</p> <p>24 certified, cage free, whatever, were the same</p> <p>25 price, when the farmers who are accepting the</p>	<p style="text-align: right;">Page 276</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 to all his eggs being under one program. If</p> <p>3 he had only 20 percent of his customers</p> <p>4 wanting the enhanced welfare, 100 percent of</p> <p>5 his eggs are under the program, that</p> <p>6 80 percent, he's paid, he's absorbing that</p> <p>7 costs because the customers don't want it.</p> <p>8 So I'm saying this would provide the</p> <p>9 mechanism to assist those farmers.</p> <p>10 Q. Now, in the scenario that you</p> <p>11 just described, where 100 percent of the eggs</p> <p>12 were produced under one system, were you</p> <p>13 referring to the UEP certified system?</p> <p>14 A. I was.</p> <p>15 Q. And in your view, the economic</p> <p>16 effect of the UEP certified system is to</p> <p>17 increase the price for all of the eggs that</p> <p>18 are UEP certified?</p> <p>19 MS. LEVINE: Objection to form.</p> <p>20 Mischaracterizes what the witness just</p> <p>21 testified to.</p> <p>22 MR. MCKENNEY: Objection to</p> <p>23 form. Calls for expert testimony.</p> <p>24 THE WITNESS: UEP was able to</p> <p>25 convince the market reporter, which is</p>
<p style="text-align: right;">Page 275</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 additional costs, they're basically absorbing</p> <p>3 that cost rather than passing it on to the</p> <p>4 customer. And so what I was stating here is</p> <p>5 that the new animal welfare program that we</p> <p>6 were trying to implement through the Process</p> <p>7 Verified Program would allow an individual</p> <p>8 customer, let's say he has three barns with</p> <p>9 chickens in those barns. But he has maybe</p> <p>10 only 20 percent of all his customers that</p> <p>11 want an enhanced welfare system that follows</p> <p>12 all the guidelines, that means that he has</p> <p>13 80 percent that would rather just buy the</p> <p>14 lower priced eggs. Under the Process</p> <p>15 Verified Program, he would have to</p> <p>16 demonstrate to the satisfaction of USDA that</p> <p>17 those eggs were being separated from all the</p> <p>18 other eggs, there was no commingling and he</p> <p>19 could sell those eggs under the enhanced</p> <p>20 program for an increased price because it was</p> <p>21 a value added product, whereas, the other</p> <p>22 eggs, he could sell to other customers at a</p> <p>23 more economically priced level. So by</p> <p>24 differentiating in that fashion, one farmer</p> <p>25 can take control of his marketing as opposed</p>	<p style="text-align: right;">Page 277</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 called Urner Barry, U-R-N-E-R, Barry</p> <p>3 that when they sold eggs, they would</p> <p>4 actually differentiate the price</p> <p>5 between UEP certified and non-UEP</p> <p>6 certified in order to make up that</p> <p>7 little bit of difference in the cost.</p> <p>8 So there was a differentiation that</p> <p>9 UEP was able to maneuver through the</p> <p>10 price reporter.</p> <p>11 BY MR. NOVAK:</p> <p>12 Q. So that price increase applied</p> <p>13 to all eggs that were UEP certified eggs?</p> <p>14 A. Correct.</p> <p>15 Q. And one of the primary</p> <p>16 advantages that you sought for the PVP</p> <p>17 program is that it facilitated customer</p> <p>18 choice as to whether they would take those</p> <p>19 higher priced UEP certified eggs or lower</p> <p>20 priced eggs that were not produced under the</p> <p>21 UEP Certified Program?</p> <p>22 A. That's correct.</p> <p>23 MR. MCKENNEY: Objection.</p> <p>24 Leading.</p> <p>25 THE WITNESS: That's correct.</p>

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<p style="text-align: right;">Page 278</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. NOVAK:</p> <p>3 Q. I believe you testified earlier</p> <p>4 today with respect to backfilling. Was</p> <p>5 backfilling prohibited under the PVP program</p> <p>6 that you --</p> <p>7 MR. MCKENNEY: Objection. Asked</p> <p>8 and answered.</p> <p>9 MR. NOVAK: Let me finish the</p> <p>10 question.</p> <p>11 MR. MCKENNEY: Same objection.</p> <p>12 BY MR. NOVAK:</p> <p>13 Q. Was backfilling prohibited</p> <p>14 under the PVP program that you developed?</p> <p>15 A. No.</p> <p>16 MR. MCKENNEY: Same objection.</p> <p>17 BY MR. NOVAK:</p> <p>18 Q. And why not?</p> <p>19 MR. MCKENNEY: Same objection.</p> <p>20 THE WITNESS: There is, to my</p> <p>21 knowledge, no science that prohibits</p> <p>22 backfilling cages to maximize the</p> <p>23 efficiency of the conventional cage</p> <p>24 system.</p> <p>25 BY MR. NOVAK:</p>	<p style="text-align: right;">Page 280</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 verifying that the Animal Welfare Guidelines</p> <p>3 contained in the program that you had</p> <p>4 established were met by that particular egg</p> <p>5 producer?</p> <p>6 A. They were the only officials</p> <p>7 that could verify that program. I could not</p> <p>8 get another independent auditor to go out</p> <p>9 there. They had to be the officials that had</p> <p>10 been trained in process verification programs</p> <p>11 which as I've stated in ISO 9000 and 9001</p> <p>12 certification program.</p> <p>13 Q. Can you talk a little bit more</p> <p>14 about ISO 9000 and ISO 9001, as to what they</p> <p>15 require?</p> <p>16 A. Yes. In a nutshell, the --</p> <p>17 what it requires is the USDA will follow the</p> <p>18 egg from the moment it's laid by the hen all</p> <p>19 the way through the chicken house, through</p> <p>20 the processing, through transportation until</p> <p>21 it reaches the customer. So they are</p> <p>22 verifying the steps along the way that that</p> <p>23 egg came from a PVP certified hen. The</p> <p>24 production guidelines themselves in terms of</p> <p>25 the thickness of the actual production</p>
<p style="text-align: right;">Page 279</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'd like to direct your</p> <p>3 attention to a couple of exhibits that you've</p> <p>4 already spoken about earlier today, if you</p> <p>5 could pull them. They are Deposition</p> <p>6 Exhibit 27 and Deposition Exhibit 57.</p> <p>7 We'll first look at Deposition</p> <p>8 Exhibit 27. This is the Verified Process</p> <p>9 Control. Is this like a newsletter that was</p> <p>10 created?</p> <p>11 A. Yes. I created this.</p> <p>12 Q. And down in the bottom left</p> <p>13 corner of Exhibit 27, you drafted a section</p> <p>14 or wrote a section that dealt with the USDA</p> <p>15 process verified mark that would be placed on</p> <p>16 cartons of eggs that complied with the</p> <p>17 Process Verified Program that you were</p> <p>18 developing?</p> <p>19 A. Yes. It would be up to the</p> <p>20 individual to choose whether they wanted to</p> <p>21 put that on the carton or not, but it was</p> <p>22 available to them.</p> <p>23 Q. And that mark would signify</p> <p>24 that the United States Department of</p> <p>25 Agriculture had actually participated in</p>	<p style="text-align: right;">Page 281</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 guidelines would be a thickness that was very</p> <p>3 thin much like UEP certified, but the actual</p> <p>4 documentation necessary to be UEP certified</p> <p>5 would be like all these documents together.</p> <p>6 So you can see that there's a lot more --</p> <p>7 it's much more document intensive. On this</p> <p>8 page, when I started to give a little detail</p> <p>9 about what's involved, I did mention in</p> <p>10 earlier testimony there were 42 scientific</p> <p>11 journals referenced in the production</p> <p>12 guidelines, but the amount of auditing that</p> <p>13 goes on throughout the distribution chain is</p> <p>14 very intensive. Where the officials from</p> <p>15 USDA, when they would visit the farm and they</p> <p>16 would go through the documentation that I had</p> <p>17 developed, it might talk about process</p> <p>18 improvement. And it will say to the farmer,</p> <p>19 show me the documentation in your files where</p> <p>20 you've made improvements in your process so</p> <p>21 that you can be compliant with these</p> <p>22 guidelines. They were so document intensive</p> <p>23 that the USDA officials actually had to see</p> <p>24 the documents before they signed off on each</p> <p>25 one of those items. Sparboe Farms was the</p>



<p style="text-align: right;">Page 282</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 very first egg company in the nation to be</p> <p>3 process verified. The next poultry farm to</p> <p>4 be process verified was Purdue chicken which</p> <p>5 is a broiler company. We led the way in</p> <p>6 process verification which is the highest</p> <p>7 certification that USDA offers today because</p> <p>8 of the detail that is specified here on the</p> <p>9 front page of this newsletter.</p> <p>10 Q. Now, with respect to the</p> <p>11 following of the egg through the chain of</p> <p>12 distribution, did you have an understanding</p> <p>13 as to whether the UEP Certified Guidelines</p> <p>14 similarly provided some method of following</p> <p>15 the egg through the chain of distribution?</p> <p>16 MR. MCKENNEY: Objection. Form.</p> <p>17 Vague. Ambiguous.</p> <p>18 THE WITNESS: Since I was the</p> <p>19 spokesperson for the UEP Certified</p> <p>20 Program at one time, and I represented</p> <p>21 the program to the nation's media, I</p> <p>22 feel I'm an expert witness in that</p> <p>23 respect, it was not as intensive and</p> <p>24 did not carry all the way to the</p> <p>25 consumer. We actually -- in the</p>	<p style="text-align: right;">Page 284</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 wasn't a similar documentation effort in the</p> <p>3 UEP Certified Program establishing that the</p> <p>4 eggs being produced under UEP Animal Welfare</p> <p>5 Guidelines, tracing them through the chains</p> <p>6 of distribution, were actually the eggs that</p> <p>7 customers purchased on the shelves at grocery</p> <p>8 stores?</p> <p>9 A. That's correct .</p> <p>10 MR. MCKENNEY: Objection.</p> <p>11 Vague. Ambiguous. Compound. And</p> <p>12 leading.</p> <p>13 THE WITNESS: That's correct.</p> <p>14 BY MR. NOVAK:</p> <p>15 Q. Now, so far I think we've</p> <p>16 covered four differences between the Process</p> <p>17 Verified Program that you had developed and</p> <p>18 the UEP Certified Program. The first one</p> <p>19 being the difference in how scientists that</p> <p>20 were members of the Scientific Advisory</p> <p>21 Committee were paid; the second one being the</p> <p>22 100 percent rule and the requirement that 100</p> <p>23 percent of production comply with guidelines;</p> <p>24 the third being backfilling, and the fourth</p> <p>25 being USDA verification. Are there other</p>
<p style="text-align: right;">Page 283</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 process verified there are steps to</p> <p>3 verify that the consumer has the egg</p> <p>4 that says on the carton that this was</p> <p>5 process verified. UEP had a set of</p> <p>6 production guidelines within the</p> <p>7 chicken house that verified they were</p> <p>8 following certain guidelines in terms</p> <p>9 of the amount of space, in terms of</p> <p>10 making sure there was feed when they</p> <p>11 were doing a molt which would be a low</p> <p>12 protein diet for the chicken, in terms</p> <p>13 of how they even trimmed the beaks.</p> <p>14 All that was in house or within the</p> <p>15 chicken barn, whereas the process</p> <p>16 verified was much more extensive. And</p> <p>17 so I think the development as I</p> <p>18 mentioned, took me a year to write</p> <p>19 that with numerous edits by the USDA</p> <p>20 prior to finalization. It's just a</p> <p>21 much more extensive series of</p> <p>22 documents that are necessary by the</p> <p>23 farm to be compliant.</p> <p>24 BY MR. NOVAK:</p> <p>25 Q. And just so I'm clear, there</p>	<p style="text-align: right;">Page 285</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 differences that come to mind to you in terms</p> <p>3 of the PVP program that you had developed --</p> <p>4 MS. LEVINE: Objection.</p> <p>5 BY MR. NOVAK:</p> <p>6 Q. -- as compared to the UEP</p> <p>7 Certified Program?</p> <p>8 MS. LEVINE: Object to the form.</p> <p>9 Counsel testifying. He's your</p> <p>10 witness.</p> <p>11 THE WITNESS: The Process</p> <p>12 Verified Program mandates additional</p> <p>13 documentation to comply with</p> <p>14 international standard. The PVP, or</p> <p>15 Process Verified Program, is</p> <p>16 recognized in 64 countries for its</p> <p>17 compliance with ISO 9001 for quality</p> <p>18 management system. So there's a lot</p> <p>19 more required of the farmer in order</p> <p>20 to be compliant with the Process</p> <p>21 Verified Program. I'd be happy to</p> <p>22 spend the time to actually go through</p> <p>23 more of that documentation to help you</p> <p>24 appreciate that. That's the process I</p> <p>25 went through when I presented the</p>

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<p style="text-align: right;">Page 286</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 program to Wal-Mart in 2008. And they</p> <p>3 could see firsthand that it was a much</p> <p>4 more comprehensive program than just a</p> <p>5 set of Animal Welfare Guidelines like</p> <p>6 the UEP Certified Guidelines.</p> <p>7 BY MR. NOVAK:</p> <p>8 Q. So a fifth difference in the</p> <p>9 program in addition to the four that I</p> <p>10 identified and that you testified about would</p> <p>11 be the extensiveness of the documentation</p> <p>12 required?</p> <p>13 A. Correct.</p> <p>14 Q. By the way, what does ISO stand</p> <p>15 for?</p> <p>16 A. International Standards</p> <p>17 Organization.</p> <p>18 Q. And the ISO 9000 and ISO 9001</p> <p>19 are actual standards that the International</p> <p>20 Standards Organization has developed that</p> <p>21 relates to egg production?</p> <p>22 A. No, it relates to documentation</p> <p>23 necessary for quality management systems. I</p> <p>24 had to marry the documentation that's</p> <p>25 required under ISO with poultry production</p>	<p style="text-align: right;">Page 288</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 VIDEOGRAPHER: On the record.</p> <p>3 5:25. This is the beginning of tape</p> <p>4 number seven.</p> <p>5 BY MR. NOVAK:</p> <p>6 Q. Mr. Klippen, I'd like to focus</p> <p>7 for a moment on an earlier period of time</p> <p>8 back when you were employed by UEP, and there</p> <p>9 was a period where you were employed as vice</p> <p>10 president of government relations. Correct?</p> <p>11 A. That's correct.</p> <p>12 Q. I'm not sure if you ever</p> <p>13 described what your job responsibilities were</p> <p>14 during the period of time that you were</p> <p>15 employed by UEP as the vice president of</p> <p>16 government relations.</p> <p>17 A. I was the chief lobbyist for</p> <p>18 the egg industry, so my responsibilities</p> <p>19 would be to educate members of Congress and</p> <p>20 to work with the federal regulatory agencies</p> <p>21 in representing the egg industry on the</p> <p>22 various issues that have come up from time to</p> <p>23 time, whether it's food safety or processing</p> <p>24 concerns that might have been addressed by</p> <p>25 the Food Safety Inspection Service or any</p>
<p style="text-align: right;">Page 287</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 practices all the way through the supply</p> <p>3 chain until it reaches the consumer. And so</p> <p>4 they would provide documentation for a</p> <p>5 process control and they would say how can</p> <p>6 you meet this process control. And I would</p> <p>7 help USDA to understand that if the farmer</p> <p>8 follows this documentation that I provided to</p> <p>9 them, that that would be in compliance. They</p> <p>10 would examine that document. And the people</p> <p>11 who are actually coming out to the farms had</p> <p>12 experience in poultry production so they had</p> <p>13 some knowledge of what goes on in these</p> <p>14 barns, could actually see for themselves</p> <p>15 that, yes, what that farmer was doing was</p> <p>16 consistent with what the ISO documentation</p> <p>17 required.</p> <p>18 MR. NOVAK: I think we're at a</p> <p>19 break on the tape so we'll take a</p> <p>20 quick break.</p> <p>21 VIDEOGRAPHER: Off the record.</p> <p>22 5:18. The end of tape number six.</p> <p>23 - - -</p> <p>24 (A recess was taken.)</p> <p>25 - - -</p>	<p style="text-align: right;">Page 289</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 number of agencies. Environmental Protection</p> <p>3 Agency, for example, is another one. So I</p> <p>4 represented the egg farmers to the government</p> <p>5 in Washington, D.C.</p> <p>6 Q. Would it be fair to say that</p> <p>7 with respect to the UEP's interactions with</p> <p>8 any federal regulatory agencies, that you</p> <p>9 would be the liaison through whom such</p> <p>10 communications occurred?</p> <p>11 A. Absolutely.</p> <p>12 - - -</p> <p>13 (Exhibit Klippen-63, UEP Annual</p> <p>14 Board Meeting and Executive Conference</p> <p>15 October 14-15, 1999 Tucson, Arizona</p> <p>16 Minutes, Bates UE0297186 - UE0297190,</p> <p>17 was marked for identification.)</p> <p>18 - - -</p> <p>19 BY MR. NOVAK:</p> <p>20 Q. We've had marked for</p> <p>21 identification purposes Deposition</p> <p>22 Exhibit Number 63 which was a document</p> <p>23 produced by the UEP bearing the Bates number</p> <p>24 UE0297186 through 190. Mr. Klippen,</p> <p>25 Deposition Exhibit 63 purports to be the</p>

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<p style="text-align: right;">Page 290</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 annual board meeting and executive conference</p> <p>3 minutes for a UEP board meeting that appears</p> <p>4 to have occurred on October 14 and 15 of 1999</p> <p>5 in Tucson, Arizona.</p> <p>6 In the normal course of your</p> <p>7 performance of responsibilities as vice</p> <p>8 president of government relations, would you</p> <p>9 have received annual board minutes for UEP</p> <p>10 meetings?</p> <p>11 A. That was the standard</p> <p>12 procedure, yes.</p> <p>13 Q. And I note on the first page of</p> <p>14 Deposition Exhibit 63 that it lists under</p> <p>15 "STAFF" you as being present at this meeting.</p> <p>16 Would you have been present at the 1999</p> <p>17 annual meeting?</p> <p>18 A. I was.</p> <p>19 Q. I'd like to direct your</p> <p>20 attention to the third page of Deposition</p> <p>21 Exhibit 63, under the section of the document</p> <p>22 entitled "MARKETING COMMITTEE REPORT," and</p> <p>23 just ask you to read that for a moment.</p> <p>24 A. [Reviewing document.]</p> <p>25 Just that one page?</p>	<p style="text-align: right;">Page 292</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 this motion back in the 1999 UEP board</p> <p>3 meeting?</p> <p>4 A. Yes.</p> <p>5 Q. Now, in the performance of your</p> <p>6 responsibilities as vice president of</p> <p>7 government relations, as it relates to the</p> <p>8 implementation of that motion by UEP, did --</p> <p>9 was there ever discussion as to whether UEP</p> <p>10 would seek a business review letter from the</p> <p>11 United States Department of Justice's</p> <p>12 antitrust division to review any of the</p> <p>13 activity that's characterized in that motion?</p> <p>14 MS. LEVINE: Object to the</p> <p>15 extent, Mr. Klippen, that you received</p> <p>16 any information from UEP's counsel at</p> <p>17 this time you were a UEP employee, we</p> <p>18 raise the privilege.</p> <p>19 THE WITNESS: So the question</p> <p>20 you're asking, did the Department of</p> <p>21 Justice want to communicate with USDA</p> <p>22 about some supply programs, supply</p> <p>23 management program?</p> <p>24 BY MR. NOVAK:</p> <p>25 Q. No. The question was a little</p>
<p style="text-align: right;">Page 291</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Yes.</p> <p>3 A. Okay.</p> <p>4 Q. I'm going to ask you just a few</p> <p>5 quick questions with respect to this page of</p> <p>6 the minutes from the 1999 UEP board meeting.</p> <p>7 They relate to one of the motions that's</p> <p>8 contained on the third page of Deposition</p> <p>9 Exhibit 63, specifically the minutes read,</p> <p>10 "MOTION: It was moved by Baker and seconded</p> <p>11 by Krouse that UEP submit a supply program to</p> <p>12 the members in which they may voluntarily</p> <p>13 participate. The program is to include the</p> <p>14 following:</p> <p>15 "1. To reduce each member's</p> <p>16 flock size by 5% as quickly as possible and</p> <p>17 to maintain this through July 1, 2000.</p> <p>18 "2. To immediately molt 5% of</p> <p>19 your flock.</p> <p>20 "3. To establish a committee</p> <p>21 to review, by no later than November 10th, a</p> <p>22 hatch reduction program."</p> <p>23 That concludes that specific</p> <p>24 motion.</p> <p>25 Do you recall discussion of</p>	<p style="text-align: right;">Page 293</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 bit different.</p> <p>3 A. I'm sorry.</p> <p>4 Q. I'm glad you asked that</p> <p>5 clarifying question, because I want to make</p> <p>6 sure we're on the same wavelength.</p> <p>7 Did UEP ever discuss submitting</p> <p>8 a business review letter to the U.S.</p> <p>9 Department of Justice to have them review</p> <p>10 from an antitrust compliance perspective any</p> <p>11 of the conduct that's characterized in the</p> <p>12 motion that we just discussed?</p> <p>13 MS. ANDERSON: Object.</p> <p>14 MS. LEVINE: I repeat my</p> <p>15 objection, that any -- to the extent</p> <p>16 you had any conversations if they were</p> <p>17 with counsel, I direct you not to</p> <p>18 answer under UEP's privilege.</p> <p>19 THE WITNESS: No, I'm not aware.</p> <p>20 BY MR. NOVAK:</p> <p>21 Q. Did you ever have discussions</p> <p>22 whether any of the activity that was</p> <p>23 characterized in that motion would be the</p> <p>24 subject of a federal marketing order sought</p> <p>25 by UEP from the U.S. Department of</p>

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<p style="text-align: right;">Page 294</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Agriculture?</p> <p>3 MS. LEVINE: Same objection.</p> <p>4 THE WITNESS: I do not recall</p> <p>5 specifically any of that in relation</p> <p>6 to this particular motion.</p> <p>7 BY MR. NOVAK:</p> <p>8 Q. Irrespective of whether there</p> <p>9 was any discussion about it internally,</p> <p>10 during the time period that you performed as</p> <p>11 vice president of government relations at</p> <p>12 UEP, UEP never sought a federal marketing</p> <p>13 order for any of their activity, did they?</p> <p>14 MS. LEVINE: Same objection.</p> <p>15 THE WITNESS: I think it was</p> <p>16 pretty universally understood that</p> <p>17 there would be an effort to at least</p> <p>18 have that discussion within the</p> <p>19 industry. So to answer your question,</p> <p>20 yes, it was public knowledge that we</p> <p>21 would discuss a federal marketing</p> <p>22 order. I do not recall ever</p> <p>23 submitting a business review to the</p> <p>24 Department of Justice along those</p> <p>25 lines, but there was a discussion</p>	<p style="text-align: right;">Page 296</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 are you -- give me an example so I can</p> <p>3 respond.</p> <p>4 Q. Well, economic challenges of</p> <p>5 different producers to actually be</p> <p>6 profitable?</p> <p>7 A. That is an ongoing occurrence</p> <p>8 within any industry that there are times when</p> <p>9 individuals within the industry have economic</p> <p>10 challenges. So, yes, it was not a government</p> <p>11 relations responsibility of mine to be privy</p> <p>12 to that knowledge, but I was friends with</p> <p>13 many of these people in the industry that may</p> <p>14 have confided in me that they were</p> <p>15 struggling.</p> <p>16 Q. Did you have an understanding</p> <p>17 as to whether smaller producers in the</p> <p>18 industry had a more difficult time</p> <p>19 maintaining their economic viability as</p> <p>20 compared to large producers?</p> <p>21 MS. ANDERSON: Object to the</p> <p>22 form of the question. Vague and</p> <p>23 ambiguous.</p> <p>24 THE WITNESS: There were some</p> <p>25 periods of time when it was difficult</p>
<p style="text-align: right;">Page 295</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 about this time period when there was</p> <p>3 some discussion within the industry at</p> <p>4 various meetings where members and</p> <p>5 non-members were present, that they</p> <p>6 would talk about the possibility of a</p> <p>7 federal marketing order.</p> <p>8 BY MR. NOVAK:</p> <p>9 Q. Did you ever submit on behalf</p> <p>10 of UEP to the U.S. Department of Agriculture</p> <p>11 a request that a federal marketing order</p> <p>12 issue or apply in some manner for a federal</p> <p>13 marketing order?</p> <p>14 MS. LEVINE: Same objection.</p> <p>15 THE WITNESS: I cannot recall,</p> <p>16 I'm sorry.</p> <p>17 BY MR. NOVAK:</p> <p>18 Q. By virtue of the performance of</p> <p>19 your responsibilities and general knowledge</p> <p>20 of how the egg industry operates, did you</p> <p>21 develop an appreciation for the particular</p> <p>22 challenges that faced different producers in</p> <p>23 the industry in the, say, 2000 through 2010</p> <p>24 time period?</p> <p>25 A. Specifically what challenges</p>	<p style="text-align: right;">Page 297</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 for all the farmers, whether they were</p> <p>3 large or small, but the larger ones</p> <p>4 because they were better capitalized,</p> <p>5 could weather the economic storms</p> <p>6 better than smaller ones. So I would</p> <p>7 say, yes, there was.</p> <p>8 BY MR. NOVAK:</p> <p>9 Q. And with respect to the UEP</p> <p>10 certification program for its animal welfare</p> <p>11 guidelines, did small egg farmers have a more</p> <p>12 difficult time economically complying with</p> <p>13 the requirements of that program as compared</p> <p>14 to large farms?</p> <p>15 MS. ANDERSON: Object to the</p> <p>16 form of the question. Vague and</p> <p>17 ambiguous.</p> <p>18 MR. MCKENNEY: Calls for</p> <p>19 speculation. Lacks foundation.</p> <p>20 MS. LEVINE: Objection to form.</p> <p>21 THE WITNESS: I cannot recall</p> <p>22 any specific farms or farmers that</p> <p>23 were having economic difficulties at</p> <p>24 that time during that period of time</p> <p>25 as a direct result of trying to comply</p>

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<p style="text-align: right;">Page 298</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 with the program.</p> <p>3 BY MR. NOVAK:</p> <p>4 Q. I want to focus on maybe some</p> <p>5 more recent time frames. Are you familiar</p> <p>6 with an organization called Egg Farmers of</p> <p>7 America?</p> <p>8 A. I am.</p> <p>9 Q. What's your understanding of</p> <p>10 that organization?</p> <p>11 A. Egg Farmers of America is a</p> <p>12 coalition of smaller medium sized egg farms</p> <p>13 and farmers who had banded together to oppose</p> <p>14 the direction of a national egg bill within</p> <p>15 Congress. I was invited to participate with</p> <p>16 that group, and eventually they asked me to</p> <p>17 represent them as a group in total before</p> <p>18 Congress. We are no longer Egg Farmers of</p> <p>19 America. We are now the National Association</p> <p>20 of Egg Farmers. And we are duly registered.</p> <p>21 Q. What period of time have you</p> <p>22 been involved in representing whether it's</p> <p>23 called the Egg Farmers of America or the</p> <p>24 National Association of Egg Farmers, before</p> <p>25 Congress?</p>	<p style="text-align: right;">Page 300</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 would have benefited the larger egg farmers.</p> <p>3 It actually would have led to insolvency of</p> <p>4 the smaller egg farmers.</p> <p>5 Q. Do you know if UEP had a</p> <p>6 position with respect to that egg bill?</p> <p>7 A. They favored the egg bill.</p> <p>8 - - -</p> <p>9 (Exhibit Klippen-64, Response to</p> <p>10 UEP Trademarking "Egg Farms of</p> <p>11 America" blog post, was marked for</p> <p>12 identification.)</p> <p>13 - - -</p> <p>14 BY MR. NOVAK:</p> <p>15 Q. Mr. Klippen, to your knowledge,</p> <p>16 does the National Association of Egg Farmers</p> <p>17 have a Web site?</p> <p>18 A. Not to my knowledge. We did,</p> <p>19 but it's no longer.</p> <p>20 Q. Do you know if or do you --</p> <p>21 A. Excuse me. Back up. You said</p> <p>22 the National Association of Egg Farmers?</p> <p>23 Q. Yes.</p> <p>24 A. My mistake. Egg Farmers of</p> <p>25 America does not have a Web site. National</p>
<p style="text-align: right;">Page 299</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. About two years now.</p> <p>3 Q. And the egg bill that you</p> <p>4 referenced, what particular provisions of it</p> <p>5 were the Egg Farmers of America, now the</p> <p>6 National Association of Egg Farmers opposed</p> <p>7 to?</p> <p>8 A. Under the egg bill, for one</p> <p>9 national standard, it actually had a</p> <p>10 provision that -- where you could gradually</p> <p>11 make adjustments in your cage size. It would</p> <p>12 gradually allow more and more space for the</p> <p>13 farmer, for the chicken rather, that owns</p> <p>14 those hens. This is a concept that would</p> <p>15 benefit the larger farmer because he might</p> <p>16 have multiple complexes or multiple farms</p> <p>17 even in various states, where to make that</p> <p>18 transition, he can dedicate one farm to make</p> <p>19 that transition. The smaller farmer cannot</p> <p>20 do that. If he starts the transition, he has</p> <p>21 to transition the entire farm because of the</p> <p>22 limited processing capabilities of that farm</p> <p>23 to handle those eggs to wash and grade them</p> <p>24 and pack them into a carton. So the national</p> <p>25 egg law that was being proposed in Congress</p>	<p style="text-align: right;">Page 301</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Association of Egg Farmers does have a Web</p> <p>3 site. I beg your pardon.</p> <p>4 Q. Do you recognize Deposition</p> <p>5 Exhibit 64 as coming from the Web site of the</p> <p>6 National Association of Egg Farmers?</p> <p>7 A. I do.</p> <p>8 Q. And this a blog post that is</p> <p>9 contained at that Web site?</p> <p>10 A. Yes it is.</p> <p>11 Q. Is it one that you authored?</p> <p>12 A. It is.</p> <p>13 Q. Now, Exhibit 64 has some</p> <p>14 description of the circumstances, I believe,</p> <p>15 under which the Egg Farmers of America</p> <p>16 changed their name to the National</p> <p>17 Association of Egg Farmers. Is it as a</p> <p>18 result of some claims by UEP with respect to</p> <p>19 the name Egg Farmers of America?</p> <p>20 MR. MCKENNEY: Objection to</p> <p>21 form.</p> <p>22 THE WITNESS: It is and you can</p> <p>23 see from the letter that I wrote to</p> <p>24 Mr. Wilson, I provided documentation</p> <p>25 to show we were using the name Egg</p>

<p style="text-align: right;">Page 302</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Farmers of America before they</p> <p>3 actually petitioned or submitted a</p> <p>4 trademark registration, but I was not</p> <p>5 going to contest the issue because</p> <p>6 that was not what we were about.</p> <p>7 Besides, I think the egg industry has</p> <p>8 faced enough litigation. So we just</p> <p>9 simply changed the name.</p> <p>10 BY MR. NOVAK:</p> <p>11 Q. So if I understand the sequence</p> <p>12 of events correctly, Egg Farmers of America</p> <p>13 used that title for a period of time prior to</p> <p>14 UEP's registration of the name?</p> <p>15 A. We did not --</p> <p>16 MR. MCKENNEY: Objection. Form.</p> <p>17 Leading.</p> <p>18 THE WITNESS: Egg Farmers of</p> <p>19 America was not registered by us. We</p> <p>20 were just using it because we were a</p> <p>21 coalition. After they formed, after</p> <p>22 they took the name, we decided that we</p> <p>23 would go ahead and file a registration</p> <p>24 under the National Association of Egg</p> <p>25 Farmers so that we would continue to</p>	<p style="text-align: right;">Page 304</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 testimony. Go ahead.</p> <p>3 THE WITNESS: As an expert in</p> <p>4 the industry with background in</p> <p>5 poultry production, the science has</p> <p>6 come forward suggesting that there are</p> <p>7 increased leg and wing breakages in</p> <p>8 the enhanced colony cage. There is</p> <p>9 less welfare because there is more</p> <p>10 pecking among the chickens. The</p> <p>11 chickens have inherent a pecking order</p> <p>12 they establish. The reason why the</p> <p>13 industry moved to the conventional</p> <p>14 cage was to minimize the number of</p> <p>15 chickens that are exposed to one</p> <p>16 another, so as they establish that</p> <p>17 pecking order, they aren't causing an</p> <p>18 inordinate number of chickens that are</p> <p>19 injuring those lower on that pecking</p> <p>20 order. These enhanced colony cages</p> <p>21 may have upwards of 60 chickens in</p> <p>22 that colony cage as opposed to seven</p> <p>23 chickens in a standard 12-by-20 size</p> <p>24 cage. So just on the pecking order</p> <p>25 alone, you can see that those lower on</p>
<p style="text-align: right;">Page 303</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 operate as a coalition.</p> <p>3 BY MR. NOVAK:</p> <p>4 Q. Can you describe for me what an</p> <p>5 enriched colony caged system is?</p> <p>6 A. An enriched colony cage is a</p> <p>7 much expanded cage that allows for many more</p> <p>8 chickens within the cage, but the enrichment</p> <p>9 includes a perching bar where the chickens</p> <p>10 can actually roost. It includes a dust</p> <p>11 bathing area where they can dust themselves.</p> <p>12 And it also includes an area where they can</p> <p>13 lay the eggs separate from just in the cage</p> <p>14 and have them roll it out, a conventional</p> <p>15 cage onto a conveyor belt.</p> <p>16 Q. Are you familiar with the</p> <p>17 scientific literature with respect to whether</p> <p>18 enriched colony cages provide animal welfare</p> <p>19 benefits to the chickens?</p> <p>20 A. I am.</p> <p>21 Q. Could you summarize your</p> <p>22 understanding of what the scientific</p> <p>23 literature says on that point?</p> <p>24 MS. ANDERSON: Objection to form</p> <p>25 of the question. Calls for expert</p>	<p style="text-align: right;">Page 305</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the pecking order are subjected to</p> <p>3 abuse by the other chickens. That</p> <p>4 plus the increased leg and wing</p> <p>5 breakages that were reported by the</p> <p>6 Coalition for Egg Sustainability on</p> <p>7 the Web site and in their research</p> <p>8 suggested that moving toward an</p> <p>9 enhanced colony cage was not supported</p> <p>10 by science but was an effort to move</p> <p>11 the industry into a direction that</p> <p>12 would have eliminated the smaller egg</p> <p>13 farmers because they could not afford</p> <p>14 to make the transition.</p> <p>15 BY MR. NOVAK:</p> <p>16 Q. To your knowledge, has UEP</p> <p>17 endorsed the transition to enriched colony</p> <p>18 cages?</p> <p>19 A. They have.</p> <p>20 Q. Do you have an understanding,</p> <p>21 given the summary that you just provided as</p> <p>22 to the effect of enriched colony cages on</p> <p>23 animal welfare, as to why UEP would endorse</p> <p>24 that change?</p> <p>25 MS. LEVINE: Object to the form</p>

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<p style="text-align: right;">Page 306</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 of the question.</p> <p>3 THE WITNESS: UEP has joined</p> <p>4 with the Humane Society of the United</p> <p>5 States in hoping to effect changes</p> <p>6 within the egg industry. By doing so,</p> <p>7 it has elicited the ire of all the</p> <p>8 other animal industries in Washington,</p> <p>9 D.C., and Egg Farmers of America,</p> <p>10 later National Association of Egg</p> <p>11 Farmers. The idea that the Humane</p> <p>12 Society of the United States is</p> <p>13 interested in trying to help animal</p> <p>14 agriculture is inconsistent with the</p> <p>15 goals and objectives that HSUS have</p> <p>16 stated previously. Even their own</p> <p>17 staff have stated that they intend to</p> <p>18 eliminate egg farmers. The result</p> <p>19 would be that we have fewer egg</p> <p>20 farmers in the United States and that</p> <p>21 would allow future changes in a</p> <p>22 national law. Every time the animal</p> <p>23 activists would come to Washington to</p> <p>24 lobby, and they're very active in</p> <p>25 Washington, they would seek changes to</p>	<p style="text-align: right;">Page 308</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 VIDEOGRAPHER: We are on the</p> <p>3 record. 6:23 p.m.</p> <p>4 MR. NOLAN: I have no further</p> <p>5 questions.</p> <p>6 - - -</p> <p>7 EXAMINATION</p> <p>8 - - -</p> <p>9 BY MS. ANDERSON:</p> <p>10 Q. Mr. Klippen, I'm Carrie</p> <p>11 Anderson, I represent Michael Foods. I just</p> <p>12 have two quick questions for you.</p> <p>13 For producers that implemented</p> <p>14 the UEP Certified Guidelines, were they</p> <p>15 allowed to purchase and sell non-certified</p> <p>16 eggs?</p> <p>17 A. Yes.</p> <p>18 Q. And did, in fact, Michael Foods</p> <p>19 do that, to your knowledge?</p> <p>20 A. Yes.</p> <p>21 Q. Three questions. My last</p> <p>22 question is, do the UEP guidelines in any</p> <p>23 part of the guidelines, including the section</p> <p>24 on density requirements, place any</p> <p>25 limitations whatsoever on any producer's</p>
<p style="text-align: right;">Page 307</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 further erode the ability of the</p> <p>3 farmer to produce a safe and wholesome</p> <p>4 and economical egg to the consumer.</p> <p>5 It's because of those changes that</p> <p>6 the -- many of the smaller egg farmers</p> <p>7 asked me as a lobbyist to represent</p> <p>8 them.</p> <p>9 I should correct that I have</p> <p>10 dropped my license as a lobbyist. I</p> <p>11 am only a consultant at the present.</p> <p>12 And that was just simply because of</p> <p>13 the reporting requirements as a</p> <p>14 federally registered lobbyist, it was</p> <p>15 taking too much of my time.</p> <p>16 MR. NOVAK: Take a quick break,</p> <p>17 but I think that's all I have.</p> <p>18 MS. ANDERSON: Why don't we take</p> <p>19 15 minutes so we can caucus and</p> <p>20 hopefully wrap up quick.</p> <p>21 VIDEOGRAPHER: Off the record.</p> <p>22 5:50.</p> <p>23 - - -</p> <p>24 (A recess was taken.)</p> <p>25 - - -</p>	<p style="text-align: right;">Page 309</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 ability to expand its flocks or add cages?</p> <p>3 A. No.</p> <p>4 MS. ANDERSON: Thank you. I</p> <p>5 have no further questions.</p> <p>6 - - -</p> <p>7 EXAMINATION</p> <p>8 - - -</p> <p>9 BY MR. MCKENNEY:</p> <p>10 Q. Mr. Klippen, we met briefly</p> <p>11 earlier, my name is Jason McKenney, I</p> <p>12 represent Cal-Maine Foods.</p> <p>13 You testified on direct</p> <p>14 examination that, to your knowledge, there is</p> <p>15 no science to prohibit backfilling cages to</p> <p>16 maximize the efficiency of the conventional</p> <p>17 egg system. Is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. You may have mentioned this</p> <p>20 before, but do you know a Dr. Jeffrey</p> <p>21 Armstrong?</p> <p>22 A. I do.</p> <p>23 Q. Do you respect Dr. Armstrong's</p> <p>24 scientific opinion on animal welfare issues?</p> <p>25 A. I do.</p>

<p style="text-align: right;">Page 310</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is Dr. Armstrong well known in</p> <p>3 the egg industry?</p> <p>4 MR. PIZZIRUSSO: Objection.</p> <p>5 Vague.</p> <p>6 BY MR. MCKENNEY:</p> <p>7 Q. You can answer.</p> <p>8 A. He is known within the</p> <p>9 industry. I'm not sure I can classify it as</p> <p>10 well known, but he is known.</p> <p>11 Q. Fair enough.</p> <p>12 Let me mark Exhibit 65.</p> <p>13 - - -</p> <p>14 (Exhibit Klippen-65, 10/4/04</p> <p>15 Letter, Bates NUCAL-08md2002-0001116,</p> <p>16 was marked for identification.)</p> <p>17 - - -</p> <p>18 BY MR. MCKENNEY:</p> <p>19 Q. This is a letter Dr. Armstrong</p> <p>20 wrote to Chairman Paul Bahan of the Producer</p> <p>21 Committee for Animal Welfare at United Egg</p> <p>22 Producers in which he states, "The UEP</p> <p>23 Scientific Advisory Committee for Animal</p> <p>24 Welfare is extremely concerned about the egg</p> <p>25 industry's current practices of backfilling.</p>	<p style="text-align: right;">Page 312</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MR. PIZZIRUSSO: Is there a</p> <p>3 question?</p> <p>4 BY MR. MCKENNEY:</p> <p>5 Q. Yes. Here is Dr. Armstrong's</p> <p>6 testimony in this case about the practice of</p> <p>7 backfilling.</p> <p>8 MR. PIZZIRUSSO: Objection.</p> <p>9 Form. Testimony in this case.</p> <p>10 BY MR. MCKENNEY:</p> <p>11 Q. And what -- QUESTION: What is</p> <p>12 the Scientific Advisory Committee's position</p> <p>13 on backfilling?</p> <p>14 ANSWER: Very negative.</p> <p>15 QUESTION: Why?</p> <p>16 ANSWER: If you have a group of</p> <p>17 animals, they have been put in there at a</p> <p>18 certain week of age when they are ready to</p> <p>19 start laying eggs. They develop a hierarchy.</p> <p>20 We call it pecking order. And that same</p> <p>21 thing translates to all animals. We talk</p> <p>22 about a pecking order. That's established.</p> <p>23 Those birds have been in there for some time</p> <p>24 and then you throw in a novel bird or two,</p> <p>25 novel birds -- novel to those birds, they</p>
<p style="text-align: right;">Page 311</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 When the scientific committee established the</p> <p>3 welfare guidelines for...space allocation, it</p> <p>4 was not our original intention to allow for</p> <p>5 the backfilling of cages by spare birds.</p> <p>6 "Bird welfare is compromised</p> <p>7 when backfilling is done every month to</p> <p>8 replace mortality for the purpose of keeping</p> <p>9 houses full. Science has shown that mixing</p> <p>10 birds from other flocks...with different ages</p> <p>11 increases susceptibility to disease. Older</p> <p>12 hens may harbor disease-causing pathogens</p> <p>13 that are easily transmitted to younger</p> <p>14 pullets that may have not been fully</p> <p>15 vaccinated or have had the opportunity to</p> <p>16 develop full immunocompetency. In addition,</p> <p>17 the introduction of unfamiliar birds to</p> <p>18 resident birds increases social competition</p> <p>19 and stress, which can increase mortality and</p> <p>20 decrease production.</p> <p>21 "It is with the utmost urgency</p> <p>22 that the Producer's Committee for Animal</p> <p>23 Welfare advises egg producers who participate</p> <p>24 in UEP's Animal Care Certified Program to</p> <p>25 eliminate the practice of backfilling."</p>	<p style="text-align: right;">Page 313</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 will hurt those birds, they will fight those</p> <p>3 birds, it is the detriment to the welfare of</p> <p>4 the bird to put them in that backfilling</p> <p>5 situation. There was no equivocation by the</p> <p>6 committee on this aspect of backfilling.</p> <p>7 That's where the practical aspect did not</p> <p>8 match up with the welfare. Because the</p> <p>9 welfare impact is so high, we couldn't get</p> <p>10 over that hurdle. If the bird had been</p> <p>11 traumatized a little bit -- excuse me. There</p> <p>12 could be -- you know, there could be disease</p> <p>13 or other aspects but the committee focused on</p> <p>14 the behavior aspects of how existing birds in</p> <p>15 a cage would react to novel birds being</p> <p>16 placed in the cage.</p> <p>17 My question to you is, Dr.</p> <p>18 Armstrong is at least one well-known</p> <p>19 respected scientist that held a contrary view</p> <p>20 as to the animal welfare aspects of</p> <p>21 backfilling?</p> <p>22 MR. PIZZIRUSSO: Objection to</p> <p>23 form.</p> <p>24 THE WITNESS: I pose to you,</p> <p>25 where is the science to support any of</p>

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<p style="text-align: right;">Page 314</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 these allegations? It's all</p> <p>3 supposition. Talking older heads may</p> <p>4 harbor disease-causing pathogens,</p> <p>5 that's true, but hens already in the</p> <p>6 cages can have disease-causing</p> <p>7 pathogens that they're harboring. It</p> <p>8 talks about fully vaccinated. Well,</p> <p>9 there may be some opportunity to</p> <p>10 develop full immunocompetency. Well,</p> <p>11 a poultryman understands that and he's</p> <p>12 not going to subject his birds to</p> <p>13 somebody or some bird that has not</p> <p>14 fully developed the immunocompetency.</p> <p>15 The pecking order is established, but</p> <p>16 this social competition and stress</p> <p>17 which can cause increased mortality</p> <p>18 and decrease production, no poultryman</p> <p>19 is just simply going to buy a chicken,</p> <p>20 put it in a cage and then let it die.</p> <p>21 If that's his intention, it's a waste</p> <p>22 of the money spent on that hen. So</p> <p>23 although I respect Dr. Armstrong, I</p> <p>24 submit to you where is the science</p> <p>25 here. He's given his opinion. And</p>	<p style="text-align: right;">Page 316</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 management decision that's made to whether</p> <p>3 you're going to actually implement that</p> <p>4 procedure to backfill those cages to maximize</p> <p>5 that situation within that farm. If you have</p> <p>6 a farm, and because of a certain disease you</p> <p>7 end up losing 20 percent early on in the</p> <p>8 stage of your flock, because they have</p> <p>9 prohibited backfilling, that farmer has been</p> <p>10 penalized from all the eggs produced by those</p> <p>11 eggs through the entire one and a half to two</p> <p>12 years that flock is in operation. What I'm</p> <p>13 saying is if you're willing to find the hens</p> <p>14 and make sure that those hens are compatible</p> <p>15 with the hens that you're going to inject</p> <p>16 them to, that it's a perfectly acceptable</p> <p>17 practice to backfill. The industry has</p> <p>18 graduated over years to come to this</p> <p>19 conclusion. So if Dr. Jeff Armstrong were in</p> <p>20 this room, I would ask him show me the</p> <p>21 science behind that. Other than just your</p> <p>22 opinion, show me the science that supports</p> <p>23 these statements.</p> <p>24 Q. My question is pretty simple.</p> <p>25 Isn't it the case that the chairman of the</p>
<p style="text-align: right;">Page 315</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 that's where I objected because there</p> <p>3 hasn't been any scientific studies to</p> <p>4 support that backfilling is a welfare</p> <p>5 related concern.</p> <p>6 BY MR. MCKENNEY:</p> <p>7 Q. Isn't it true that the chairman</p> <p>8 of the UEP Scientific Committee went on</p> <p>9 record that backfilling posed a health</p> <p>10 hazard?</p> <p>11 MR. PIZZIRUSSO: Objection to</p> <p>12 form.</p> <p>13 THE WITNESS: I'm going to read</p> <p>14 this again. He says, "Science has</p> <p>15 shown that mixing birds from other</p> <p>16 flocks and with different ages</p> <p>17 increase susceptibility to disease."</p> <p>18 That's certainly true. But again --</p> <p>19 BY MR. MCKENNEY:</p> <p>20 Q. So you agree with my question</p> <p>21 then?</p> <p>22 A. Let me finish, if I may.</p> <p>23 Again, I suggest that whenever</p> <p>24 you mix birds, you are exposing them to that</p> <p>25 susceptibility to disease. But that's a</p>	<p style="text-align: right;">Page 317</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 UEP Scientific Committee has gone on record</p> <p>3 that backfilling poses a health hazard to egg</p> <p>4 laying hens?</p> <p>5 MR. PIZZIRUSSO: Objection.</p> <p>6 Vague. Misstates his testimony.</p> <p>7 Mischaracterizes the document.</p> <p>8 THE WITNESS: I think I've</p> <p>9 answered that question.</p> <p>10 BY MR. MCKENNEY:</p> <p>11 Q. Dr. Armstrong is a scientist.</p> <p>12 Right?</p> <p>13 A. That's correct.</p> <p>14 Q. And earlier you said you</p> <p>15 respected his scientific opinion. Right?</p> <p>16 A. I do.</p> <p>17 MR. PIZZIRUSSO: Objection.</p> <p>18 Asked and answered.</p> <p>19 - - -</p> <p>20 (Exhibit Klippen-66, United</p> <p>21 Voices Washington Report, Bates</p> <p>22 UE0069683 - UE0069686, was marked for</p> <p>23 identification.)</p> <p>24 - - -</p> <p>25 BY MR. MCKENNEY:</p>

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<p style="text-align: right;">Page 318</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. I'm marking Exhibit 66 to your</p> <p>3 deposition, Mr. Klippen. If you could just</p> <p>4 review the first article here.</p> <p>5 MR. Pizzirusso: Counsel, do you</p> <p>6 have copies?</p> <p>7 MR. MCKENNEY: Yes.</p> <p>8 BY MR. MCKENNEY:</p> <p>9 Q. Let me know when you've had a</p> <p>10 chance to review it.</p> <p>11 A. [Reviewing document.] Okay.</p> <p>12 Q. Did you make a presentation to</p> <p>13 the USDA of the work being done by the UEP</p> <p>14 Scientific Advisory Committee?</p> <p>15 A. I did.</p> <p>16 Q. Is that referenced here in this</p> <p>17 United Voices article?</p> <p>18 A. It is.</p> <p>19 MR. PIZZIRUSSO: Can you repeat</p> <p>20 the Bates number just for the record?</p> <p>21 MR. MCKENNEY: It's UE0069683.</p> <p>22 BY MR. MCKENNEY:</p> <p>23 Q. You state in the article that</p> <p>24 you advocated at the meeting that "...any</p> <p>25 public policy should follow science."</p>	<p style="text-align: right;">Page 320</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And in this e-mail you state to</p> <p>3 Mr. Gregory, "Congratulations Gene. You have</p> <p>4 done a great job in motivating an entire</p> <p>5 industry to recognize the responsible thing</p> <p>6 to do."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. The responsible thing to do was</p> <p>10 to have science-based animal welfare</p> <p>11 guidelines and to use audits to demonstrate</p> <p>12 compliance. Right?</p> <p>13 A. Correct.</p> <p>14 Q. And that's what you note in</p> <p>15 this e-mail. Right?</p> <p>16 A. That's correct.</p> <p>17 Q. And in 2003, United -- UEP</p> <p>18 Certified Program included the 100 percent</p> <p>19 rule. Right?</p> <p>20 MR. PIZZIRUSSO: Objection.</p> <p>21 Lack of foundation.</p> <p>22 THE WITNESS: I do not recall</p> <p>23 exactly when the 100 percent rule</p> <p>24 actually took place.</p> <p>25 BY MR. MCKENNEY:</p>
<p style="text-align: right;">Page 319</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Is that right?</p> <p>3 A. That's correct.</p> <p>4 Q. And when you were making that</p> <p>5 statement, were you referring to the UEP</p> <p>6 Animal Welfare Guidelines?</p> <p>7 A. I was.</p> <p>8 - - -</p> <p>9 (Exhibit Klippen-67, E-mail</p> <p>10 chain, Bates UE0694999, was marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 BY MR. MCKENNEY:</p> <p>14 Q. I'll mark Defendants-67 to your</p> <p>15 deposition, Mr. Klippen. If you have a</p> <p>16 moment, just read through these two e-mails,</p> <p>17 and I have just a couple questions about</p> <p>18 them.</p> <p>19 A. [Reviewing document.]</p> <p>20 MR. MCKENNEY: For the record,</p> <p>21 this document is UE0694999.</p> <p>22 BY MR. MCKENNEY:</p> <p>23 Q. Did you author the e-mail on</p> <p>24 the top, Mr. Klippen?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 321</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And your Process Verified</p> <p>3 Program included an audit. Right?</p> <p>4 A. Correct.</p> <p>5 Q. You can put that document</p> <p>6 aside.</p> <p>7 MR. MCKENNEY: Let's go off the</p> <p>8 record for a second.</p> <p>9 VIDEOGRAPHER: Off the record.</p> <p>10 6:38.</p> <p>11 - - -</p> <p>12 (A recess was taken.)</p> <p>13 - - -</p> <p>14 VIDEOGRAPHER: On the record.</p> <p>15 6:39.</p> <p>16 - - -</p> <p>17 (Exhibit Klippen-68, E-mail</p> <p>18 chain, Bates FMI-001514 &amp; FMI-001515,</p> <p>19 was marked for identification.)</p> <p>20 - - -</p> <p>21 BY MR. MCKENNEY:</p> <p>22 Q. Mr. Klippen, I put before you</p> <p>23 Exhibit 68. Take a moment to review that</p> <p>24 e-mail.</p> <p>25 A. [Reviewing document.]</p>

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<p style="text-align: right;">Page 322</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. After you've finished reviewing</p> <p>3 this e-mail, Mr. Klippen, can you identify</p> <p>4 the document for the record?</p> <p>5 A. This was an e-mail that was</p> <p>6 sent to Karen Brown at the Food Marketing</p> <p>7 Institute. She was the one that spearheaded</p> <p>8 the development of welfare guidelines for the</p> <p>9 other commodity groups as well as UEP.</p> <p>10 Q. If you take a look the first</p> <p>11 e-mail, it's an e-mail from you to Ms. Brown.</p> <p>12 Is that right?</p> <p>13 A. Is this the one July 27, 2004?</p> <p>14 Q. Yes. FMI001515.</p> <p>15 A. Okay.</p> <p>16 Q. You state in the -- in that</p> <p>17 paragraph that the UEP programs, "...seal on</p> <p>18 the egg carton...gives consumers the</p> <p>19 knowledge that the egg producers are doing</p> <p>20 the right thing."</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. You believe what you said was</p> <p>24 truthful. Right?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 324</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. MCKENNEY:</p> <p>3 Q. I'm marking Exhibit 69,</p> <p>4 Mr. Klippen. Take a moment to review these</p> <p>5 e-mails.</p> <p>6 A. [Reviewing document.]</p> <p>7 MR. PIZZIRUSSO: Jason, can you</p> <p>8 identify 68 for the record with the</p> <p>9 Bates? I don't think you did.</p> <p>10 MR. MCKENNEY: 68 was FMI001514.</p> <p>11 THE WITNESS: Okay.</p> <p>12 BY MR. MCKENNEY:</p> <p>13 Q. Do you recognize these e-mails?</p> <p>14 A. I do.</p> <p>15 Q. Let's flip to the second page</p> <p>16 of the document. Do you know who Brian Joyer</p> <p>17 is?</p> <p>18 A. I do.</p> <p>19 Q. Who is he?</p> <p>20 A. He's an employee of Sparboe</p> <p>21 Farms.</p> <p>22 Q. The second asterisk in this</p> <p>23 e-mail states, What is FMI/NCCR's position on</p> <p>24 implementing the guidelines? Should a</p> <p>25 company allow the marketplace to influence</p>
<p style="text-align: right;">Page 323</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And in 2004, did the UEP</p> <p>3 Certified Program contain the 100 percent</p> <p>4 rule?</p> <p>5 A. As I stated, I can't remember</p> <p>6 exactly when they implemented the 100 percent</p> <p>7 rule. There was talk of actually doing 100</p> <p>8 percent compliance, but I don't remember</p> <p>9 exactly when they implemented that. When</p> <p>10 they did have that discussion, I did voice my</p> <p>11 objections to Gene at the time.</p> <p>12 Q. By the time you left UEP, the</p> <p>13 100 percent rule had been included in the UEP</p> <p>14 Certified Program. Is that right?</p> <p>15 A. I can't recall exactly when the</p> <p>16 100 percent rule became implemented. I know</p> <p>17 there was discussion leading up to that. I</p> <p>18 can't remember exactly when that was.</p> <p>19 Q. You can put that document</p> <p>20 aside.</p> <p>21 - - -</p> <p>22 (Exhibit Klippen-69, E-mail</p> <p>23 chain, Bates UE0879102 - UE0879104,</p> <p>24 was marked for identification.)</p> <p>25 - - -</p>	<p style="text-align: right;">Page 325</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 the amount of product produced under the</p> <p>3 guidelines or should the company commit 100%</p> <p>4 of their products to the guidelines</p> <p>5 regardless of the interest from customers and</p> <p>6 consumers? Is it your position that -- the</p> <p>7 same across all producer organizations?</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And does that statement, to</p> <p>11 your understanding, reflect Sparboe Farms</p> <p>12 asking FMI their position on animal</p> <p>13 welfare -- excuse me, strike that.</p> <p>14 Does that statement, to your</p> <p>15 understanding, reflect Sparboe Farms asking</p> <p>16 FMI's position on the 100 percent rule?</p> <p>17 MR. PIZZIRUSSO: Objection.</p> <p>18 Speculation. Lack of personal</p> <p>19 knowledge.</p> <p>20 THE WITNESS: I can read the</p> <p>21 question and I can see that Brian</p> <p>22 Joyer is looking for an answer on the</p> <p>23 100 percent rule, yes.</p> <p>24 BY MR. MCKENNEY:</p> <p>25 Q. And then Karen Brown's response</p>

<p style="text-align: right;">Page 326</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 is on the first page. She says, "Our goal is</p> <p>3 enhanced animal welfare for all animals in</p> <p>4 food production -- not animals used only for</p> <p>5 certain products or product categories. This</p> <p>6 is our position for all producer groups."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And judging by your first --</p> <p>10 your e-mail to Al Pope at the top, you were</p> <p>11 pleased with Karen Brown's response. Right?</p> <p>12 MR. PIZZIRUSSO: Objection to</p> <p>13 the characterization of his testimony.</p> <p>14 Form.</p> <p>15 BY MR. MCKENNEY:</p> <p>16 Q. This is your e-mail, right?</p> <p>17 A. It is, but it doesn't indicate</p> <p>18 that I was pleased other than the fact that</p> <p>19 it says that Sparboe at the time was looking</p> <p>20 for a weakness. I was representing as the</p> <p>21 spokesperson. And I simply stated that Karen</p> <p>22 corrected him, made sure that he understood</p> <p>23 the details.</p> <p>24 Q. And this refers to the 100</p> <p>25 percent rule. Correct?</p>	<p style="text-align: right;">Page 328</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 "Fantastic! Thanks." Right?</p> <p>3 A. She did provide us the e-mail</p> <p>4 that we were looking for at the time,</p> <p>5 correct.</p> <p>6 Q. You testified earlier, I</p> <p>7 believe, that to your understanding no</p> <p>8 retailer expressed support for the 100</p> <p>9 percent rule. Is that right?</p> <p>10 A. I do not know of a single</p> <p>11 retailer that expressed a desire for 100</p> <p>12 percent at the time.</p> <p>13 MR. MCKENNEY: Let me mark</p> <p>14 Exhibit 70.</p> <p>15 - - -</p> <p>16 (Exhibit Klippen-70, 12/5/08</p> <p>17 Letter, Bates UE0217821, was marked</p> <p>18 for identification.)</p> <p>19 - - -</p> <p>20 BY MR. MCKENNEY:</p> <p>21 Q. Review that letter,</p> <p>22 Mr. Klippen, and let me know when you're</p> <p>23 done.</p> <p>24 A. [Reviewing document.]</p> <p>25 MR. MCKENNEY: For the record,</p>
<p style="text-align: right;">Page 327</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MR. PIZZIRUSSO: Objection.</p> <p>3 Calls for speculation.</p> <p>4 Mischaracterizes the document.</p> <p>5 THE WITNESS: The document that</p> <p>6 Karen Brown sent to Brian Joyer does</p> <p>7 note an attempt to achieve 100 percent</p> <p>8 parody.</p> <p>9 BY MR. MCKENNEY:</p> <p>10 Q. And you were glad that Karen</p> <p>11 set him straight as you said in the top</p> <p>12 e-mail. Right?</p> <p>13 A. That's not in my e-mail. That</p> <p>14 doesn't characterize that I'm pleased. I'm</p> <p>15 simply informing him what Karen had done. It</p> <p>16 doesn't mean that I was pleased with -- as my</p> <p>17 testimony has already confirmed earlier, and</p> <p>18 documentation shows, I am -- I was not really</p> <p>19 in favor of 100 percent. I'm just simply</p> <p>20 acknowledging that she responded to him and</p> <p>21 corrected his understanding.</p> <p>22 Q. Turn back to the prior exhibit,</p> <p>23 FMI 1514. You respond to Karen Brown in the</p> <p>24 e-mail exchange where you reference the</p> <p>25 certified logo. You respond to Karen,</p>	<p style="text-align: right;">Page 329</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 this is UE0217821.</p> <p>3 THE WITNESS: Okay.</p> <p>4 BY MR. MCKENNEY:</p> <p>5 Q. Is it fair to say that this</p> <p>6 document reflects Wal-Mart's support for the</p> <p>7 100 percent rule?</p> <p>8 A. As of December the 5th, 2006,</p> <p>9 yes. But prior to that, Wal-Mart did not</p> <p>10 insist on 100 percent because they accepted</p> <p>11 the PVP as part of their certification.</p> <p>12 Q. When did you approach Wal-Mart</p> <p>13 about the PVP?</p> <p>14 A. 2000 --</p> <p>15 Q. It was after 2006. Right?</p> <p>16 A. I stand corrected. It was 2008</p> <p>17 that I approached Wal-Mart. You're correct.</p> <p>18 I don't remember seeing this letter.</p> <p>19 - - -</p> <p>20 (Exhibit Klippen-71, E-mail</p> <p>21 chain, Bates SF083624 - SF083632, was</p> <p>22 marked for identification.)</p> <p>23 - - -</p> <p>24 BY MR. MCKENNEY:</p> <p>25 Q. I'm marking Exhibit 71,</p>



<p style="text-align: right;">Page 330</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 SF083624. Review that, Mr. Klippen. When</p> <p>3 you've had a chance to review it, can you</p> <p>4 identify the document for the record?</p> <p>5 A. [Reviewing document.] Okay.</p> <p>6 Q. Can you identify the document</p> <p>7 for the record?</p> <p>8 A. Yes, it's an e-mail that I sent</p> <p>9 dated April 21, 2008, to --</p> <p>10 Q. Does this -- sorry.</p> <p>11 A. -- to Beth Schnell and Wayne</p> <p>12 Carlson.</p> <p>13 Q. Does this e-mail to Ms. Schnell</p> <p>14 and Mr. Carlton reflect your contemporaneous</p> <p>15 thoughts on UEP?</p> <p>16 A. The document reflects an effort</p> <p>17 to protect the Process Verified Program from</p> <p>18 being exposed and thereby destroyed before we</p> <p>19 can actually get it fully launched.</p> <p>20 Q. The subject matter of this</p> <p>21 e-mail is "defeating UEP." Right?</p> <p>22 A. Correct. Defeating UEP and</p> <p>23 defeating their attempts to destroy the</p> <p>24 Process Verified Program, not the</p> <p>25 organization.</p>	<p style="text-align: right;">Page 332</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MR. MCKENNEY: Let's go off the</p> <p>3 record and change tapes.</p> <p>4 VIDEOGRAPHER: Off the record.</p> <p>5 This is the end of tape number seven.</p> <p>6 The time is 6:53.</p> <p>7 - - -</p> <p>8 (A recess was taken.)</p> <p>9 - - -</p> <p>10 VIDEOGRAPHER: We're on the</p> <p>11 record. 6:55 p.m. This is the</p> <p>12 beginning tape number eight.</p> <p>13 BY MR. MCKENNEY:</p> <p>14 Q. Mr. Klippen, earlier you</p> <p>15 discussed the requirements of your PVP</p> <p>16 program. Do you recall that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. So under the PVP program,</p> <p>19 housing birds at 67 square inches was</p> <p>20 acceptable. Correct?</p> <p>21 A. Correct.</p> <p>22 Q. And housing birds at 50 square</p> <p>23 inches per bird was acceptable, too. Right?</p> <p>24 A. No.</p> <p>25 Q. It was not?</p>
<p style="text-align: right;">Page 331</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Can you pull out Exhibit 30</p> <p>3 from your stack of papers there? Do you</p> <p>4 recall discussing this document with Mr.</p> <p>5 Pizzirusso in the morning?</p> <p>6 A. Yes.</p> <p>7 Q. I want to draw your attention</p> <p>8 to the last paragraph. The last paragraph</p> <p>9 reflects your statement that an unidentified</p> <p>10 board member wondered whether animal welfare</p> <p>11 issues should be turned over to an</p> <p>12 independent organization like Klippen &amp;</p> <p>13 Associates. Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. You thought that was a good</p> <p>16 idea, too, right?</p> <p>17 A. At the time I did.</p> <p>18 Q. You thought that was a good</p> <p>19 idea because it would advance your financial</p> <p>20 interest. Right?</p> <p>21 MR. PIZZIRUSSO: Objection.</p> <p>22 Argumentative.</p> <p>23 THE WITNESS: I was a</p> <p>24 consultant, so obviously it would have</p> <p>25 benefited me financially, yes.</p>	<p style="text-align: right;">Page 333</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. No. We actually established</p> <p>3 67 square inches as the standard.</p> <p>4 Q. Your testimony was that there</p> <p>5 was no 100 percent rule under the Process</p> <p>6 Verified Program. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. But is it your testimony, then,</p> <p>9 that -- strike that.</p> <p>10 So could a producer maintain</p> <p>11 the Process Verified Program requirements and</p> <p>12 yet not maintain 67 square inches?</p> <p>13 A. That's correct. But not as a</p> <p>14 process verified producer. He could have</p> <p>15 other aspects of his operation at, say, 54</p> <p>16 square inches per bird, but if he were going</p> <p>17 to sell eggs under the Process Verified</p> <p>18 Program, the 67 square inches was the</p> <p>19 established size.</p> <p>20 Q. And then a farmer did not have</p> <p>21 67 square inches on his other flocks --</p> <p>22 A. Correct.</p> <p>23 Q. -- he could not get the PVP?</p> <p>24 A. No, he could get the PVP. He</p> <p>25 could get the PVP as long as the eggs that he</p>

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<p style="text-align: right;">Page 334</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 was selling from whatever aspect of his farm,</p> <p>3 if he was selling as PVP, those birds had to</p> <p>4 be 67 square inches. We weren't mandating</p> <p>5 size for non-PVP. So just if he had</p> <p>6 20 percent of his flock he wanted to sell as</p> <p>7 PVP, then he had to have the 67 square inches</p> <p>8 just for that 20 percent that he's selling.</p> <p>9 The others he could sell as he wished.</p> <p>10 Q. And those -- would those be</p> <p>11 PVP?</p> <p>12 A. No, they would not.</p> <p>13 Q. But then it's true, right, that</p> <p>14 part of the flock could be at 48 and part of</p> <p>15 the flock could be at 67, but the producer</p> <p>16 could still have a PVP certification. Right?</p> <p>17 A. He could have a PVP</p> <p>18 certification only for those chickens at</p> <p>19 67 square inches.</p> <p>20 Q. And he wouldn't lose it if he</p> <p>21 had other birds at 48?</p> <p>22 A. Correct. He didn't -- he was</p> <p>23 not obligated under 100 percent rule.</p> <p>24 Q. In 2011, ABC News aired a video</p> <p>25 of conditions in one of Sparboe's henhouses.</p>	<p style="text-align: right;">Page 336</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 at other than -- strike that.</p> <p>3 Did Sparboe Farms house birds</p> <p>4 at less than 67 square inches?</p> <p>5 MR. PIZZIRUSSO: Objection.</p> <p>6 Asked and answered.</p> <p>7 THE WITNESS: I've already</p> <p>8 answered that.</p> <p>9 BY MR. MCKENNEY:</p> <p>10 Q. You can answer my question.</p> <p>11 A. None of Sparboe Farms that was</p> <p>12 selling PVP came from eggs where chickens</p> <p>13 were housed less than 67 square inches. If</p> <p>14 they owned other farms, they were not selling</p> <p>15 those eggs as PVP certified.</p> <p>16 MR. MCKENNEY: Strike that as</p> <p>17 non-responsive.</p> <p>18 BY MR. MCKENNEY:</p> <p>19 Q. Did Sparboe Farms house birds</p> <p>20 at less than 67 square inches?</p> <p>21 MR. PIZZIRUSSO: Objection.</p> <p>22 Asked and answered three times now.</p> <p>23 BY MR. MCKENNEY:</p> <p>24 Q. I didn't ask if they sold PVP</p> <p>25 eggs at less than 67 inches. I asked did</p>
<p style="text-align: right;">Page 335</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Right?</p> <p>3 A. That's correct.</p> <p>4 Q. The video depicted hens crammed</p> <p>5 into crowded cages. Right?</p> <p>6 A. Incorrect. The video depicted</p> <p>7 what is occurring generally on egg farms</p> <p>8 today. They characterized it as crammed, not</p> <p>9 me.</p> <p>10 Q. The video showed birds stocked</p> <p>11 at less than 67 inches. Right?</p> <p>12 A. Incorrect. Those birds -- that</p> <p>13 operation that was shown to ABC were at</p> <p>14 72 square inches. None of the eggs produced</p> <p>15 by Sparboe Farms that met the UEP</p> <p>16 certification for process verified were less</p> <p>17 than 67 square inches.</p> <p>18 Q. But Sparboe Farms had birds</p> <p>19 stocked at less than 67 inches. Right?</p> <p>20 A. None of their company-owned</p> <p>21 farms were less than 67 square inches. None</p> <p>22 of the eggs they sold as process verified</p> <p>23 came from farms at less than 67 square</p> <p>24 inches.</p> <p>25 Q. I asked did Sparboe house birds</p>	<p style="text-align: right;">Page 337</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 they house birds at less than 67 inches.</p> <p>3 A. I suspect at one time they did.</p> <p>4 But when they employed me to implement a</p> <p>5 Process Verified Program, all of the</p> <p>6 company-owned farms went with the 67 square</p> <p>7 inches according to the Process Verified</p> <p>8 Program.</p> <p>9 Q. So while you were at Sparboe</p> <p>10 Farms, is it your testimony today under oath</p> <p>11 that no hen was housed at less than 67 square</p> <p>12 inches?</p> <p>13 A. It is.</p> <p>14 Q. After the ABC News report,</p> <p>15 Sparboe lost business. Right?</p> <p>16 A. Yes.</p> <p>17 MR. PIZZIRUSSO: Objection.</p> <p>18 Vague.</p> <p>19 BY MR. MCKENNEY:</p> <p>20 Q. It lost Target as a customer?</p> <p>21 A. Correct.</p> <p>22 Q. And McDonald's?</p> <p>23 A. Correct.</p> <p>24 Q. Woodman's?</p> <p>25 A. I don't know.</p>

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<p style="text-align: right;">Page 338</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Byerly's?</p> <p>3 A. I don't know.</p> <p>4 Q. Lunds?</p> <p>5 A. I don't know.</p> <p>6 Q. Hy-Vee?</p> <p>7 A. I was not in the marketing or</p> <p>8 sales aspect of Sparboe. I was in government</p> <p>9 relations so I was not aware of all the</p> <p>10 customers they lost. I was aware McDonald's</p> <p>11 and Target were lost because those were the</p> <p>12 names that came up during the ABC interview</p> <p>13 in which I was on television testifying.</p> <p>14 Q. And your employment was</p> <p>15 terminated with Sparboe Farms after the ABC</p> <p>16 News report. Correct?</p> <p>17 A. Correct.</p> <p>18 Q. And after the ABC News report,</p> <p>19 Sparboe rejoined the UEP Certified Program.</p> <p>20 Right?</p> <p>21 A. That's correct.</p> <p>22 Q. And by doing so, Sparboe agreed</p> <p>23 to implement the certified program over 100</p> <p>24 percent of its flocks. Right?</p> <p>25 A. Correct. They would have to to</p>	<p style="text-align: right;">Page 340</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Gene Gregory dated December 1, 2011. Right?</p> <p>3 A. Yes.</p> <p>4 MR. MCKENNEY: For the record</p> <p>5 it's Bates number CF0005892.</p> <p>6 BY MR. MCKENNEY:</p> <p>7 Q. In the second paragraph of the</p> <p>8 letter Ms. Schnell states, "This has been a</p> <p>9 very painful lesson. While UEP correctly</p> <p>10 foresaw the issues which Sparboe Farms is now</p> <p>11 confronting, we did not. It is a new day at</p> <p>12 Sparboe Farms. We believe the United Egg</p> <p>13 Producers negotiated the most workable</p> <p>14 agreement for the egg industry based on all</p> <p>15 options available. We have learned from this</p> <p>16 experience and realize the value of being an</p> <p>17 active and engaged member of United Egg</p> <p>18 Producers."</p> <p>19 This occurred on -- this letter</p> <p>20 was sent on December 1, 2011. Right?</p> <p>21 A. Correct.</p> <p>22 Q. Put that aside.</p> <p>23 MR. MCKENNEY: I'll mark</p> <p>24 Exhibit 73.</p> <p>25 - - -</p>
<p style="text-align: right;">Page 339</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 be UEP certified.</p> <p>3 Q. That's because Sparboe had</p> <p>4 learned the painful lesson about how</p> <p>5 important it was to implement animal welfare</p> <p>6 standards across all flocks. Right?</p> <p>7 MR. PIZZIRUSSO: Objection.</p> <p>8 Calls for speculation. Asking him to</p> <p>9 testify why Sparboe did something.</p> <p>10 BY MR. MCKENNEY:</p> <p>11 Q. You can answer my question.</p> <p>12 A. That is not why they did it.</p> <p>13 MR. MCKENNEY: Let me mark</p> <p>14 Exhibit 73.</p> <p>15 MR. PIZZIRUSSO: Are we on 72?</p> <p>16 MR. MCKENNEY: Let's remark it.</p> <p>17 72.</p> <p>18 - - -</p> <p>19 (Exhibit Klippen-72, 12/1/11</p> <p>20 Letter, Bates CF0005892, was marked</p> <p>21 for identification.)</p> <p>22 - - -</p> <p>23 BY MR. MCKENNEY:</p> <p>24 Q. This is a letter from Beth</p> <p>25 Schnell to Gene -- Beth Schnell from (sic)</p>	<p style="text-align: right;">Page 341</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit Klippen-73, Web site</p> <p>3 printout, was marked for</p> <p>4 identification.)</p> <p>5 - - -</p> <p>6 BY MR. MCKENNEY:</p> <p>7 Q. After this video occurred, you</p> <p>8 initially claimed -- strike that.</p> <p>9 After the ABC News video had</p> <p>10 been played, you initially claimed that the</p> <p>11 video was staged. Right?</p> <p>12 A. Correct.</p> <p>13 Q. But Sparboe publicly disagreed</p> <p>14 with you. Right?</p> <p>15 A. Correct.</p> <p>16 Q. And you didn't actually think</p> <p>17 it was staged. Right?</p> <p>18 A. Incorrect. I believe it was</p> <p>19 staged. To this day I still maintain it was</p> <p>20 a staged video.</p> <p>21 Q. You weren't simply trying to</p> <p>22 cover up the truth because this happened</p> <p>23 while you were in charge of animal welfare at</p> <p>24 Sparboe?</p> <p>25 A. That's correct. I was not</p>

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<p style="text-align: right;">Page 342</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 covering up anything.</p> <p>3 Q. And Sparboe terminated your</p> <p>4 employment?</p> <p>5 A. That's correct.</p> <p>6 Q. Right after this happened.</p> <p>7 Right?</p> <p>8 A. Shortly thereafter.</p> <p>9 Q. In the article it references a</p> <p>10 management change at Sparboe Farms. Do you</p> <p>11 see that?</p> <p>12 A. Explain to me where it is.</p> <p>13 Q. I'll find it for you.</p> <p>14 I'll withdraw that question.</p> <p>15 You indicated earlier that you</p> <p>16 sent your PVP program to the Humane Society</p> <p>17 for the United States. Is that correct?</p> <p>18 A. Incorrect.</p> <p>19 Q. That's incorrect?</p> <p>20 A. I took it to them and showed it</p> <p>21 to them.</p> <p>22 Q. So you showed --</p> <p>23 A. I didn't send it to them. I</p> <p>24 showed it to them and then I took all the</p> <p>25 documents back away with me.</p>	<p style="text-align: right;">Page 344</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 group that actually objected and asked --</p> <p>3 they filed a FOIA to try to get the details</p> <p>4 of what was in the Process Verified Program.</p> <p>5 So there was another group.</p> <p>6 Q. And what did they object to?</p> <p>7 A. Anything to do with a claim</p> <p>8 that we were providing for the welfare of</p> <p>9 hens, and still putting chickens in cages was</p> <p>10 objectionable to that group.</p> <p>11 Q. You testified earlier that you</p> <p>12 had three scientists that were involved in</p> <p>13 developing your program. Is that right?</p> <p>14 A. That's correct.</p> <p>15 Q. I may be stating them wrong,</p> <p>16 but Dr. Koelkebeck, Dr. Anderson and Dr.</p> <p>17 Cobarrubia?</p> <p>18 A. Correct.</p> <p>19 Q. What work precisely did your</p> <p>20 scientists do?</p> <p>21 A. They assisted me in the</p> <p>22 development of specific production guidelines</p> <p>23 such as cage dimensions, the amount of feeder</p> <p>24 space, the time to beak trim, how to induce a</p> <p>25 molt, the size of free ranging birds, the</p>
<p style="text-align: right;">Page 343</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. That's fine. Make that clear</p> <p>3 for the record.</p> <p>4 Did the Humane Society of the</p> <p>5 United States, they did not endorse your</p> <p>6 program. Right?</p> <p>7 A. Correct.</p> <p>8 Q. Are you aware of a single set</p> <p>9 of Animal Welfare Guidelines applicable to</p> <p>10 cage production systems that HSUS has</p> <p>11 endorsed?</p> <p>12 A. They endorsed the effort by UEP</p> <p>13 to develop a national egg law which would</p> <p>14 have been one established set of guidelines</p> <p>15 not based on science.</p> <p>16 Q. But prior to that, they had not</p> <p>17 endorsed it?</p> <p>18 A. Correct.</p> <p>19 Q. You've also testified that no</p> <p>20 animal rights group has criticized your</p> <p>21 program. Correct?</p> <p>22 A. The Process Verified Program?</p> <p>23 Q. Yes.</p> <p>24 A. No. There was -- then I need</p> <p>25 to correct that statement. There was one</p>	<p style="text-align: right;">Page 345</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 size of barn hens. Based on the science that</p> <p>3 was available to them through the</p> <p>4 universities and the Poultry Science</p> <p>5 Association, I wrote the guidelines and they</p> <p>6 helped me to adjust so it was consistent with</p> <p>7 the available science at the time.</p> <p>8 Q. How many meetings did your</p> <p>9 scientific advisors hold with you?</p> <p>10 A. We had numerous phone</p> <p>11 conversations where I had all three on the</p> <p>12 phone at the time. I don't remember the</p> <p>13 number. But this was a process that took</p> <p>14 place over a period of many months.</p> <p>15 Q. When did you disclose the</p> <p>16 details of your program to the public?</p> <p>17 A. I disclosed the details of the</p> <p>18 Process Verified Program first to Wal-Mart,</p> <p>19 to the buyers at Wal-Mart. Not to this Scott</p> <p>20 gentleman that is referenced here, but to the</p> <p>21 buyers of eggs at Wal-Mart. Tony Airoso, I</p> <p>22 can't remember his name now, but Tony. I</p> <p>23 divulged the details to the farmers that were</p> <p>24 participating in trying to understand an</p> <p>25 alternative approach. I divulged the</p>

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<p style="text-align: right;">Page 346</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 details, but then also when the FOIAs were</p> <p>3 filed, I did respond, I did redact what I</p> <p>4 considered privileged information, but by and</p> <p>5 large they can actually piece together the</p> <p>6 details of the program.</p> <p>7 Q. And today, is it possible to</p> <p>8 get a completely un-redacted set of your</p> <p>9 guidelines if you were a member of the</p> <p>10 public?</p> <p>11 A. I don't believe it's available</p> <p>12 anywhere on a Web site or anywhere because</p> <p>13 nobody is process verified within the egg</p> <p>14 industry today.</p> <p>15 Q. At the time --</p> <p>16 MR. PIZZIRUSSO: Could we get a</p> <p>17 time check? I think we're beyond the</p> <p>18 seven hours, I don't know how much</p> <p>19 longer you think you have.</p> <p>20 MR. MCKENNEY: I just have a</p> <p>21 couple more questions and then we can</p> <p>22 go off the record and then assess.</p> <p>23 MS. LEVINE: We might have a</p> <p>24 couple.</p> <p>25 BY MR. MCKENNEY:</p>	<p style="text-align: right;">Page 348</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 VIDEOGRAPHER: On the record.</p> <p>4 7:16.</p> <p>5 BY MR. MCKENNEY:</p> <p>6 Q. Mr. Klippen, is the animal</p> <p>7 rights group that criticized your program</p> <p>8 named the Animal Welfare Institute?</p> <p>9 A. I can't recall. Because</p> <p>10 there's so many, I can't remember if that was</p> <p>11 them or not. But it could have been, yes.</p> <p>12 Q. And they say, in fact, at the</p> <p>13 time of its certification, some of Sparboe's</p> <p>14 facilities only gave each hen 54 square</p> <p>15 inches despite the fact that its own PVP</p> <p>16 guidelines required 67 square inches. That's</p> <p>17 a criticism that 100 percent of Sparboe's</p> <p>18 farms aren't at 67 square inches. Right?</p> <p>19 A. It's incorrect. All of</p> <p>20 Sparboe's company-owned facilities, in order</p> <p>21 for the USDA federal officials to certify</p> <p>22 that they were compliant with the PVP, had to</p> <p>23 go in and take measurements to see if the</p> <p>24 farms were at 67 square inches per bird and</p> <p>25 all their company facilities were. USDA had</p>
<p style="text-align: right;">Page 347</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. When Sparboe Farms was process</p> <p>3 verified, was there an un-redacted version of</p> <p>4 your program available to the public?</p> <p>5 A. Not to the public.</p> <p>6 Q. And what would a member of the</p> <p>7 public have to do to get a copy of your</p> <p>8 guidelines at that time?</p> <p>9 A. It was not available to the</p> <p>10 public.</p> <p>11 Q. At all?</p> <p>12 A. It was available to customers.</p> <p>13 It was available to industry. It was</p> <p>14 available to retailers. But you have to</p> <p>15 understand that the more information is</p> <p>16 released to the public, more opportunities to</p> <p>17 have the kind of attacks that occurred to</p> <p>18 Sparboe following that -- or that occurred</p> <p>19 prior to that ABC 20/20 segment.</p> <p>20 MR. MCKENNEY: Let's go off the</p> <p>21 record.</p> <p>22 VIDEOGRAPHER: Off the record.</p> <p>23 7:12.</p> <p>24 - - -</p> <p>25 (A recess was taken.)</p>	<p style="text-align: right;">Page 349</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 on their Web site certification numbers and</p> <p>3 the addresses for each one of their</p> <p>4 company-owned farms specifying that they were</p> <p>5 PVP compliant. So that statement is</p> <p>6 incorrect.</p> <p>7 Q. The statement that you're</p> <p>8 contending is incorrect is at the time of the</p> <p>9 certification, some of Sparboe's facilities</p> <p>10 only gave each hen 54 square inches despite</p> <p>11 the fact that its own PVP guidelines required</p> <p>12 67 square inches?</p> <p>13 A. Asked and answered.</p> <p>14 MR. KLIPPEN: Just answer.</p> <p>15 THE WITNESS: Oh, I'm sorry. I</p> <p>16 think I answered that question</p> <p>17 already. All of Sparboe's</p> <p>18 company-owned facilities at the time</p> <p>19 of PVP certification by federal</p> <p>20 officials had to be compliant to the</p> <p>21 67 square inches in order to receive</p> <p>22 certification. All of Sparboe's</p> <p>23 company-owned facilities were</p> <p>24 compliant.</p> <p>25 MR. MCKENNEY: Let's go off the</p>

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<p style="text-align: right;">Page 350</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 record.</p> <p>3 VIDEOGRAPHER: Off the record.</p> <p>4 7:17.</p> <p>5 - - -</p> <p>6 (A recess was taken.)</p> <p>7 - - -</p> <p>8 VIDEOGRAPHER: On the record.</p> <p>9 7:24.</p> <p>10 BY MR. MCKENNEY:</p> <p>11 Q. Earlier we were discussing the</p> <p>12 space allowance per bird at Sparboe</p> <p>13 facilities. Do you recall that?</p> <p>14 A. Yes.</p> <p>15 Q. And is it true that Sparboe</p> <p>16 owns birds that aren't housed at Sparboe</p> <p>17 facilities?</p> <p>18 A. They might, yes. That's quite</p> <p>19 possible. It's called contract farms.</p> <p>20 Q. And they own birds at contract</p> <p>21 farms. Right?</p> <p>22 A. They did. That's correct.</p> <p>23 Q. And for the -- let me ask this</p> <p>24 question then. It's true, Mr. Klippen that</p> <p>25 all of Sparboe's company-owned birds were not</p>	<p style="text-align: right;">Page 352</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 VIDEOGRAPHER: On the record.</p> <p>4 7:23.</p> <p>5 - - -</p> <p>6 EXAMINATION</p> <p>7 - - -</p> <p>8 BY MS. LEVINE:</p> <p>9 Q. Good evening, Mr. Klippen. My</p> <p>10 name is Jan Levine. I represent United Egg</p> <p>11 Producers and United States Egg Marketers. I</p> <p>12 think we met in the hall this afternoon. I</p> <p>13 just have a couple of follow-up questions.</p> <p>14 You could be a member of UEP</p> <p>15 and not a member of the UEP Certified</p> <p>16 Program. Correct?</p> <p>17 A. Correct.</p> <p>18 Q. And you could be a member of</p> <p>19 the UEP Certified Program and not a member of</p> <p>20 UEP. Correct?</p> <p>21 A. Correct.</p> <p>22 Q. And if you chose not to be on</p> <p>23 the UEP Certified Program, you didn't have to</p> <p>24 be. Right?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 351</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 housed at 67 inches. Right?</p> <p>3 A. All of Sparboe's birds on</p> <p>4 company-owned farms were at 67 square inches,</p> <p>5 that's correct.</p> <p>6 Q. But company-owned birds, not at</p> <p>7 company-owned facilities, they were housed at</p> <p>8 less than 67 inches. Right?</p> <p>9 A. Possibly, yes.</p> <p>10 Q. In fact, they were. Right?</p> <p>11 A. I don't know. I wasn't on</p> <p>12 those farms. Those are contract farmers. I</p> <p>13 was not on those farms. However, let me add</p> <p>14 that none of those eggs coming from those</p> <p>15 contract farms at less than 67 square inches</p> <p>16 would have commingled with the PVP eggs.</p> <p>17 They could not do that.</p> <p>18 Q. And they were sold to Sparboe</p> <p>19 eggs. Right?</p> <p>20 A. Quite possibly, yes.</p> <p>21 MR. MCKENNEY: Off the record.</p> <p>22 VIDEOGRAPHER: Off the record.</p> <p>23 7:23.</p> <p>24 - - -</p> <p>25 (A recess was taken.)</p>	<p style="text-align: right;">Page 353</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 Q. You could still be a member of</p> <p>3 UEP. Right?</p> <p>4 A. Correct.</p> <p>5 Q. There was no penalty if you</p> <p>6 were not on the UEP Certified Program.</p> <p>7 Correct?</p> <p>8 A. There is no penalty if you were</p> <p>9 on it. There would have been a penalty if</p> <p>10 you were not.</p> <p>11 Q. You would still be a member of</p> <p>12 UEP even if you were not a member of the UEP</p> <p>13 Certified Program. Right?</p> <p>14 A. There would be a penalty</p> <p>15 associated with that because you would be</p> <p>16 selling your eggs at a discount over UEP</p> <p>17 certified.</p> <p>18 Q. UEP -- that depends on each</p> <p>19 producer's pricing mechanism. Right?</p> <p>20 A. No, that was consistent with</p> <p>21 what was reported at the Urner Barry price</p> <p>22 reporting system.</p> <p>23 Q. You, yourself, don't know what</p> <p>24 any egg producer from UEP sold his or her</p> <p>25 eggs at, do you?</p>

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<p style="text-align: right;">Page 354</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't know. Not even</p> <p>3 Sparboe. I don't know what they sold.</p> <p>4 Q. So you're just talking about</p> <p>5 the Urner Barry pricing, what is public?</p> <p>6 A. Yes.</p> <p>7 Q. Your membership in UEP was</p> <p>8 allowed to go on, you were permitted to be a</p> <p>9 UEP member even if you weren't on the</p> <p>10 certified program. Right?</p> <p>11 A. Right.</p> <p>12 MR. PIZZIRUSSO: Objection.</p> <p>13 Asked and answered.</p> <p>14 BY MS. LEVINE:</p> <p>15 Q. And there was no requirement</p> <p>16 that you join the UEP Certified Program.</p> <p>17 Right?</p> <p>18 MR. PIZZIRUSSO: Objection.</p> <p>19 Asked and answered.</p> <p>20 THE WITNESS: Correct.</p> <p>21 BY MS. LEVINE:</p> <p>22 Q. It was a voluntary program.</p> <p>23 Right?</p> <p>24 A. Correct.</p> <p>25 Q. Now, on your PVP shield, it</p>	<p style="text-align: right;">Page 356</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 documents such as these, no documents</p> <p>3 reviewed again.</p> <p>4 Q. And you did not participate in</p> <p>5 UEP meetings after you left?</p> <p>6 A. Correct.</p> <p>7 Q. And you did not participate in</p> <p>8 UEP committee meetings after you left?</p> <p>9 A. Correct. Yes.</p> <p>10 Q. So you have no firsthand</p> <p>11 knowledge out of your own eyes and your own</p> <p>12 ears how UEP conducted its meetings after you</p> <p>13 left?</p> <p>14 A. With the exception that after I</p> <p>15 left is when they had this discussion about</p> <p>16 prohibiting backfilling. Prior to that,</p> <p>17 backfilling was acceptable. It wasn't until</p> <p>18 2000 -- well, it was when we had that letter</p> <p>19 by Dean Armstrong.</p> <p>20 Q. My question to you is, you were</p> <p>21 not at a UEP meeting after 2004. Right?</p> <p>22 A. I wasn't personally, correct.</p> <p>23 Q. So you did not witness UEP</p> <p>24 meetings with your own eyes and your own ears</p> <p>25 after you left UEP. That's a correct</p>
<p style="text-align: right;">Page 355</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 does not say animal welfare or animal care.</p> <p>3 Right?</p> <p>4 A. Correct.</p> <p>5 Q. And, in fact, the USDA would</p> <p>6 not permit the PVP program to have the words</p> <p>7 animal care or animal welfare on the shield.</p> <p>8 Is that correct?</p> <p>9 A. Currently. Originally they had</p> <p>10 the words animal welfare.</p> <p>11 Q. And then they had you take it</p> <p>12 off. Right?</p> <p>13 A. Not me. They took it off of</p> <p>14 their program so we didn't offer that.</p> <p>15 Q. Now, after you left UEP in</p> <p>16 2004, you did not attend UEP meetings.</p> <p>17 Right?</p> <p>18 A. Correct.</p> <p>19 Q. And you did not review UEP</p> <p>20 documents. Right?</p> <p>21 A. Correct. Let me adjust that.</p> <p>22 I didn't review any UEP documents. Sometimes</p> <p>23 producers that were UEP members would share</p> <p>24 the UEP newsletter with me giving details</p> <p>25 what the organization was up to. But as to</p>	<p style="text-align: right;">Page 357</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 statement?</p> <p>3 MR. PIZZIRUSSO: Objection.</p> <p>4 Asked and answered.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MS. LEVINE:</p> <p>7 Q. Mr. Klippen, could you go back</p> <p>8 and look at Exhibit 62, which I think is your</p> <p>9 January 15, 2007, newsletter.</p> <p>10 A. Okay.</p> <p>11 Q. Now, who did this newsletter go</p> <p>12 to?</p> <p>13 A. There were a number of clients.</p> <p>14 I think there was some documentation to show</p> <p>15 there were people that were participants that</p> <p>16 I would send this to. There was a handful of</p> <p>17 egg farms that wanted to know what I was</p> <p>18 involved in.</p> <p>19 Q. I want to direct your</p> <p>20 attention -- did you write this newsletter,</p> <p>21 Mr. Klippen?</p> <p>22 A. I did.</p> <p>23 Q. In the middle of the document,</p> <p>24 you write, "Plain and simple, under one</p> <p>25 system the producer will end up paying more</p>

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<p style="text-align: right;">Page 358</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 for eggs produced under that system. Our new</p> <p>3 comprehensive plan allows for choices by the</p> <p>4 customers, and with those enhanced</p> <p>5 specifications in the choices the customer</p> <p>6 can pay the additional costs."</p> <p>7 Did I read that correctly?</p> <p>8 A. You did.</p> <p>9 Q. And what you're saying is that</p> <p>10 since the customer can pick and choose, if</p> <p>11 they want enhanced animal welfare, that cost</p> <p>12 can be passed on to the consumer. Right?</p> <p>13 A. Correct.</p> <p>14 Q. And in the one system UEP</p> <p>15 program, that extra cost was absorbed by the</p> <p>16 egg producer and cannot be passed on to the</p> <p>17 consumer. Is that correct?</p> <p>18 A. That's what I'm stating in the</p> <p>19 document.</p> <p>20 MS. LEVINE: Thank you. I have</p> <p>21 no further questions.</p> <p>22 MR. PIZZIRUSSO: Are the</p> <p>23 defendants all done? Before we go</p> <p>24 off, I want to make one objection to</p> <p>25 the use of document 72 which was a</p>	<p style="text-align: right;">Page 360</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 MS. ANDERSON: The record so</p> <p>3 notes.</p> <p>4 Does anyone have any further</p> <p>5 questions?</p> <p>6 Thank you for your time,</p> <p>7 Mr. Klippen, although Jamie should</p> <p>8 probably convened the deposition.</p> <p>9 MR. PIZZIRUSSO: The deposition</p> <p>10 is convened.</p> <p>11 - - -</p> <p>12 (Witness excused.)</p> <p>13 - - -</p> <p>14 (Deposition concluded at 7:31</p> <p>15 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 359</p> <p>1 KENNETH KLIPPEN - HIGHLY CONFIDENTIAL</p> <p>2 document dated December 1, 2011, looks</p> <p>3 like it was produced from Center Fresh</p> <p>4 Farms. All of the defendants objected</p> <p>5 to producing any documents post 2008.</p> <p>6 And if the defendants are going to use</p> <p>7 this document, then we're going to</p> <p>8 request all the documents around this</p> <p>9 time period as well from the</p> <p>10 defendants because we don't think it's</p> <p>11 fair to be able to use this document</p> <p>12 affirmatively but not have the</p> <p>13 background and the other discussion</p> <p>14 internally at UEP and Sparboe about</p> <p>15 this letter. So I want to make a</p> <p>16 standing objection to that document on</p> <p>17 the record.</p> <p>18 MS. LEVINE: We'll also make an</p> <p>19 objection to the plaintiff's use of</p> <p>20 Exhibit 40 as beyond the parameters of</p> <p>21 using confidential information. And</p> <p>22 so we move to strike that testimony.</p> <p>23 MS. ANDERSON: As violating the</p> <p>24 protective order?</p> <p>25 MS. LEVINE: Yes.</p>	<p style="text-align: right;">Page 361</p> <p>1</p> <p>2 C E R T I F I C A T E</p> <p>3</p> <p>4</p> <p>5 I do hereby certify that I am a Notary</p> <p>6 Public in good standing, that the aforesaid</p> <p>7 testimony was taken before me, pursuant to</p> <p>8 notice, at the time and place indicated; that</p> <p>9 said deponent was by me duly sworn to tell</p> <p>10 the truth, the whole truth, and nothing but</p> <p>11 the truth; that the testimony of said</p> <p>12 deponent was correctly recorded in machine</p> <p>13 shorthand by me and thereafter transcribed</p> <p>14 under my supervision with computer-aided</p> <p>15 transcription; that the deposition is a true</p> <p>16 and correct record of the testimony given by</p> <p>17 the witness; and that I am neither of counsel</p> <p>18 nor kin to any party in said action, nor</p> <p>19 interested in the outcome thereof.</p> <p>20</p> <p>21 WITNESS my hand and official seal this</p> <p>22 8th day of May, 2014.</p> <p>23</p> <p>24</p> <p>25</p> <p>_____</p> <p>Notary Public</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1</p> <p>2       <b>INSTRUCTIONS TO WITNESS</b></p> <p>3</p> <p>4       Please read your deposition over</p> <p>5 carefully and make any necessary corrections.</p> <p>6 You should state the reason in the</p> <p>7 appropriate space on the errata sheet for any</p> <p>8 corrections that are made.</p> <p>9       After doing so, please sign the errata</p> <p>10 sheet and date it.</p> <p>11       You are signing same subject to the</p> <p>12 changes you have noted on the errata sheet,</p> <p>13 which will be attached to your deposition.</p> <p>14       It is imperative that you return the</p> <p>15 original errata sheet to the deposing</p> <p>16 attorney within thirty (30) days of receipt</p> <p>17 of the deposition transcript by you. If you</p> <p>18 fail to do so, the deposition transcript may</p> <p>19 be deemed to be accurate and may be used in</p> <p>20 court.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1       <b>ERRATA SHEET</b></p> <p>2   IN RE: PROCESSED EGG PRODUCTS ANTITRUST LITIGATION</p> <p>3   DATE: 4/29/14</p> <p>4   PAGE   LINE       CORRECTION AND REASON</p> <p>5   _____</p> <p>6   _____</p> <p>7   _____</p> <p>8   _____</p> <p>9   _____</p> <p>10   _____</p> <p>11   _____</p> <p>12   _____</p> <p>13   _____</p> <p>14   _____</p> <p>15   _____</p> <p>16   _____</p> <p>17   _____</p> <p>18   _____</p> <p>19   _____</p> <p>20   _____</p> <p>21   _____</p> <p>22   _____</p> <p>23</p> <p>24   _____</p> <p>25   (DATE)       KENNETH KLIPPEN</p>
<p>Page 363</p> <p>1</p> <p>2       <b>ACKNOWLEDGMENT OF DEPONENT</b></p> <p>3       I have read the foregoing transcript of</p> <p>4 my deposition and except for any corrections or</p> <p>5 changes noted on the errata sheet, I hereby</p> <p>6 subscribe to the transcript as an accurate record</p> <p>7 of the statements made by me.</p> <p>8</p> <p>9       _____</p> <p>10       KENNETH KLIPPEN</p> <p>11</p> <p>12       SUBSCRIBED AND SWORN before and to me</p> <p>13 this ____ day of _____, 20____.</p> <p>14</p> <p>15</p> <p>16       _____</p> <p>17       NOTARY PUBLIC</p> <p>18</p> <p>19</p> <p>20   My Commission expires:</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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